CONSOLIDATED DIGEST OF CASE LAWS (JANUARY 2022 TO DECEMBER 2022)

(**Journals Referred**: ITR 440 to 449, Taxman 284 to 289, CTR 324 to 329 , DTR 209 to 220 191 ITD to 197, 93 ITR to 100, 209 DTR 216, 215 TTJ to 220 , BCAJ, The Chamber's Journal , www.itatonline.org)

S.2(14)(iii): Capital asset-Agricultural land-Capital gains-agricultural lands converted for non-agricultural purpose-lands did not fall within 8 kms from Municipality of Bangalore-Continued agricultural operation-Mere inclusion of land in Special Zone without any infrastructure development does not convert land into non-agricultural land-Not liable to capital gain tax.[S. 45]

Assessee got their agricultural lands converted for non-agricultural purpose.The assessee sold the part of the land and claimed the surplus as exempt. The Assessing Office assessed the surplus as capital gains.As per Certificate of Tahsildar and PWD Engineer's Certificate, distance between lands in question and BBMP was more than 8 kms. Tribunal had recorded that, though land was converted, assessee had continued agricultural operations which was evident from fact that income derived from agricultural operations declared by assessee were accepted by revenue.Even as per Notification issued by Central Government, lands did not fall within 8 kms from BBMP. The Tribunal held that the assessee was not liable to capital gains. Court also held that inclusion of lands in Special Zone cannot be a determining factor, hence, mere inclusion of land without any infrastructure development does not convert land into non-agricultural land. (AY. 2008-09)

CIT v. M.R. Anandaram (HUF) (2022) 289 Taxman 121/ 216 DTR 432/ 328 CTR 90/ /(2023) 450 ITR 94 (Karn)(HC)

S.2(14)(iii): Capital asset - Agricultural land-Revenue records are ultimate proof of the land being agricultural land- Land situated beyond prescribed Limit — Cannot be considered as non-agricultural Land. [S. 45]

A mere misstatement or confusion with regard to the identical name of 2 villages cannot form the basis for making a huge addition under the head capital gains under the surmise and suspicion that this village could be within 5 kilometres from the nearest municipal limits. The Tribunal further reiterated that the revenue records are ultimate proof of the land being agricultural land and that its subsequent use is non-consequential.(AY.2011 -12)

Mohideen Sharif Inayathulla Sharif v. ITO (2022) 95 ITR 345 (Chennai) (Trib)

S.2(14)(iii): Capital asset-Agricultural land-Hazira Notified area-not a municipal area or deemed municipality-Compensation received on the acquisition of such land was not taxable [S. 10(37)

Held that ~~an~~ agricultural land situated in Hazira notified area is not a municipal area or deemed municipality, hence could not be treated as a 'capital asset' defined under section

2(14) and compensation received on an acquisition of such land was not taxable under Income-tax Act. (AY. 2007-08 to 2010-11)
ChimanbhaiDahyabhai Patel. v. ITO (2022) 195 ITD 585 (Surat) (Trib.)

S.2(14)(iii): Capital asset-Agricultural land-Failure to provide evidence-Matter remanded back to AO for verification [S. 10(37), 45]
Held that the assessee filed to provide any evidence to demonstrate that agricultural land sold was beyond 8 km from the outer limit of the Municipal corporation and also not satisfied the 13 tests laid down in the case of Sarifabibi Mohmed Ibrahim (Smt). v. CIT(1993) 70 taxmann.com 301/ 304 ITR 631 (SC). The matter was remanded back to AO for the assessee to establish the same. (AY. 2013-14)
Greenboom Developers & Resorts Ltd. v. ITO (2022) 195 ITD 567 (Mum)(Trib.)

S. 2(15) : Charitable purpose-Advancement of object of general public utility-Changes in law after 1-4-2009-Cannot engage in any trade, commerce or business, or provide service in relation thereto for consideration-Activities must be connected to achievement of object of general public utility and receipts therefrom do not exceed quantified limit-Consideration on cost-basis or nominally above cost not Commercial-Charges significantly above cost would fall within mischief of Trade, commerce or business-AO has to decide year to year basis-Separate books of account must be maintained-Statutory corporation, Board or any other body set up by State or Central Government for achieving public functions or services-Receipts not business or commercial receipts-Assessing authorities to determine if consideration significantly higher than cost and if so, whether comply with quantified limit-Central Government to decide on case-by-case basis whether and to what extent exemption can be awarded to notified bodies-Denial of benefit after 1-4-2011 does not preclude from claiming exemption under other provisions-Regulatory bodies tasked with exclusive duties of prescribing curriculum, disciplining professionals and prescribing standards of professional conduct-Prima facie not business or commercial receipts-Bodies involved in trade promotion or purely for co-ordinating and assisting trading organisations-Subjected to rigours of proviso-GSI India Services for benefit of trade and business, from which it received significantly high receipts-Exemption denied-State Cricket Associations-Commercial rights-Each case and for every year tax Authorities to examine pattern of receipts and expenditure-Matter remanded-Private Trust for publishing newspaper-Income received from advertisements constitutes business or commercial receipts Not entitled to exemption-Assesseeformed with object of running Arogya Kendra-No Clarity whether supplying Mid-Day meals fell within objects clause of Society-Tax effect less than Rs. 10 Lakhs-Receipts not exceeding quantitative limit-Entitled to registration-Interpretation of taxing statutes-Amending provisions-to be considered in light of history of legislation and what lawmakers intended by amendment-.Aids to construction-Speeches made in legislature can be looked into-Circulars-Binding upon Departmental Authorities if they advance proposition within framework of statute-Not binding where contrary to statute-Not binding on courts.[10(20A), 10(23C), 10(46), 11, 11(4), 11(4A), 12, 12A, 12AA, 13(8), 143(3)]

While interpreting the meaning of the charitable purpose the Court held that the paradigm change achieved by section 2(15) of the Income-tax Act, 1961 after its amendment in 2008 and as it stands today, is that firstly a charity engaged in an object of general public utility cannot engage in any activity in the nature of trade, commerce, business or any service in relation to such activities for any consideration (including a statutory fee, etc.). This is

emphasised in the negative language employed by the main part of section 2(15). Therefore, the idea of a predominant object among several other objects, is discarded. The prohibition is relieved to a limited extent, by the proviso which carves out the condition by which otherwise prohibited activities can be engaged in by charities carrying out objects of general public utility. The conditions are : (a) that such activities in the nature of trade, commerce, business or service (in relation to trade, commerce or business for consideration) should be in the course of "actual carrying on" of the object of general public utility and (b) the quantum of receipts from such activities should not exceed 20 per cent. of the total receipts. Both parts of the proviso : (i) and (ii) (to section 2(15)) have to be read conjunctively, given the conscious use of "or" connecting the two. This means that if a charitable trust carries on any activity in the nature of business, trade or commerce, in the actual course of fulfilling its objectives, the income from such business, should not exceed the limit defined in sub-clause (ii) to the proviso. If a property is held under trust, and such property is a business, the case would fall under section 11(4) and not under section 11(4A) of the Act. Section 11(4A) of the Act, would apply only to a case where the business is not held under trust. The insertion of section 13(8), the seventeenth proviso to section 10(23C) and the third proviso to section 143(3) (all of which were inserted by the Finance Act, 2012, but with retrospective effect from April 1, 2009), further reinforces the interpretation of "charitable purpose". These provisions form the machinery to control the conditions under which income is exempt. The effect of the seventeenth proviso to section 10(23C) is to impose the same condition, i. e., that the trade, commerce or business activity or service relating to trade, business or commerce, should be part of the assessee's activities, to achieve its object of advancing general public utility. The other condition is that if such trading or commercial activity takes place the receipts should be confined to a prescribed percentage of the overall receipts. Section 13(8) too reinforces the same condition.

Statutory corporations, boards, authorities, commissions, (by whatsoever names called) in the housing development, town planning and industrial development sectors are involved in the advancement of objects of general public utility. Such statutory corporations, boards, trust authorities, may be involved in promoting public objects and also in the course of pursuing their objects, involved or engaged in activities in the nature of trade, commerce or business. The determinative tests to consider when determining whether such statutory bodies, boards, authorities, corporations, autonomous or self-governing Government sponsored bodies, are engaged in advancement of any other object of general public utility within the meaning of section 2(15) of the Act, are : (a) does the State or Central law, or the memorandum of association, constitution, advance any other object of general public utility, such as development of housing, town planning, development of industrial areas, or regulation of any activity in the general public interest, supply of essential goods or services, such as water supply, sewage service, distributing medicines, of food grains (public distribution system entities), etc.; (b) the purpose for which such assessee engaged in advancement of any other object of general public utility, is set up, whether for furthering the development of a charitable object or for carrying on trade, business or commerce or service in relation to such trade, etc.; (c) rendition of service or providing any article or goods on cost or nominal mark-up basis would ipso facto not be activities in the nature of business, trade or commerce or service in relation to such business, trade or commerce; (d) where the controlling instrument imposes certain responsibilities or duties upon the concerned body, such as fixation of rates on pre-determined statutory basis, or based on formulae regulated by law, or rules having the force of law, setting apart amenities for the purposes of development, charging fixed rates towards supply of water, providing sewage services, providing food grains, medicines, or retaining monies in deposits or Government securities and drawing interest therefrom or charging lease rent, ground rent, etc., per se, recovery of such charges, fee, interest, etc.

cannot be characterized as "fee, cess or other consideration" for engaging in activities in the nature of trade, commerce, or business, or for providing service in relation thereto; (e) does the statute or controlling instrument set out the policy or scheme, for how the goods and services are to be distributed; in what proportion the surpluses, or profits, can be permissively garnered; are there limits within which plots, rates or costs are to be worked out; whether the function in which the body is engaged, is normally something a Government or State is expected to engage in, having regard to provisions of the Constitution and the enacted laws, and the observations of the court in New Delhi Municipal Council v. State of Punjab [1997] 7 SCC 339; whether in case surplus or gains accrue, the corporation, body or authority is permitted to distribute it, and if so, only to the Government or State; the extent to which the State or its instrumentalities have control over the corporation or its bodies, and whether it is subject to directions by the concerned Government, etc.; (f) as long as the entity while actually furthering an object of general public utility, carries out activities that entail some trade, commerce or business, which generates profit (i. e., amounts that are significantly higher than the cost), and the quantum of such receipts are within the prescribed limit (20 per cent. as mandated by the second proviso to section 2(15)) the entity can be characterised as an assessee engaged in advancement of any other object of general public utility. The other conditions imposed by the seventh proviso to section 10(23C) and by section 11 have to necessarily be fulfilled; (g) as a consequence, it is necessary in each case, having regard to the first proviso and seventeenth proviso (the latter introduced in 2012, with retrospective effect from April 1, 2009) to section 10(23C), that the authority considering granting exemption, takes into account the objects of the enactment or instrument concerned, its underlying policy, and the nature of the functions, and activities, of the entity claiming to be engaged in advancement of any other object of general public utility. If in the course of its functioning it collects fees, or any consideration that merely cover its expenditure (including administrative and other costs plus a small proportion for provision), such amounts are not consideration towards trade, commerce or business, or service in relation thereto. However, amounts which are significantly higher than recovery of costs, have to be treated as receipts from trade, commerce or business. It is for those amounts, that the quantitative limit in proviso (ii) to section 2(15) applies, and for which separate books of account will have to be maintained under other provisions of the Act.

The amounts charged towards supplying goods or articles, or rendering services, i. e., for fees for providing typical essential services like providing water, distribution of food grains, distribution of medicines, maintenance of roads, parks, etc., by corporations, boards or trusts or authorities set up under enactments ought not to be characterised as "commercial receipts". The rationale for such exclusion would be that if such rates, fees, tariffs, etc., determined by statutes and collected for essential services, are included in the overall income as receipts as part of trade, commerce or business, the quantitative limit of 20 per cent. imposed by second proviso to section 2(15) would be attracted thereby negating the essential general public utility object and thus driving up the costs to be borne by the ultimate user or consumer which is the general public.

Charities engaged in "advancement of any other object of general public utility" are distinct from the "per se categories" of charity (education, medical relief, relief to the poor, and later preservation of water sheds, monuments, environment, and yoga). The restriction imposed by Parliament against charities prohibiting them from carrying on activities of profit does not apply to the first six categories. The importance of terms expressly defined in a statute is that they are internal and binding aids to interpretation. The prefacing-to any definition-of the phrase "unless the context otherwise requires" merely signifies that in case there is anything expressly to the contrary, in any specific provision in the body of the Act, a different meaning can be attributed. However, to discern the purport of a provision, the term, as defined, has to

prevail, whenever the expression is used in the statute. This rule is subject to the exception that when a contrary intention is plain, in particular instances, that meaning is to be given.(AY.2009-10 to 2014-15)

ACIT (E) v. Ahmedabad Urban Development Authority (2022)449 ITR 1 / 329 CTR 297/219 DTR 209/ 143 taxmann.com 278 (SC)

Editorial: For further clarification refer,ACIT(E) v. Ahmedabad Urban Development Authority (2022)449 ITR 389 / (2023) 290 Taxman 137 (SC)

S. 2(15) : Charitable purpose-Object of general public utility-Clarification-Law declared by court to be applied for assessment years in question, which were before court and were decided-Appeals decided against department, matter to be treated as final-For assessment years not before Court, authorities to apply law declared in judgment, having regard to facts of each year [S. 10(20A), 10(23C), 10(46), 11, 11(4), 11(4A), 12, 12A, 12AA, 13(8), 143(3)]

The Department sought a clarification of the judgment in ACIT (E) v. Ahmedabad Urban Development Authority (2022) 449 ITR 1(SC) contending the conclusions recorded in the judgment and those in paragraphs 253H and 254 of the judgment precluded it from dealing with the assessments of parties before the court and the dismissal of the Department's appeals precluded an examination of the merits for these assessees in future, as well, the court clarified that the reference to application of the law declared by the court's judgment had to be understood in the context that it applied for the assessment years in question, which were before the court and were decided; wherever the appeals were decided against the Department, they were to be treated as final. However, the reference to future application had to be understood in the context that for the assessment years which the court was not called upon to decide, the concerned authorities would apply the law declared in the judgment, having regard to the facts of each such assessment year.

ACIT(E) v. Ahmedabad Urban Development Authority (2022)449 ITR 389/ (2023) 290 Taxman 137 (SC)

Editorial : Clarification, ACIT(E) v. Ahmedabad Urban Development Authority(2022) 449 ITR 1 (SC)

S.2(22)(d): Dividend -Any distribution to its share holders on the reduction of its share capital- Deemed dividend - Redemption of Preference shares at premium – Not assessable as dividend – Addition was deleted. [S. 2(22)(e), R. 11UA (1)(c)(b), 11UA (1)(c)(c]

Held that the assessee's valuation report obtained from a chartered accountant in compliance with the requirement of rule 11UA(1)(c)(c) for the purpose of valuation of equity and preference shares, considered the guideline value of the land and building, which was correct. The guideline value of land and building was applied to arrive at the fair value of the preference shares based on what the former would fetch in the open market on the date of valuation and thereby reckon the premium value for the redemption of the preference shares. Therefore, the addition made by the Transfer Pricing Officer to compute the differential premium based on the book value of assets was not sustainable. As no addition could be made towards the premium on redemption of the preference shares, the addition made by the Commissioner (Appeals) treating it as deemed dividend under section 2(22)(e) would not

survive.That the premium paid by the assessee for the redemption of preference shares was neither towards reduction of share capital nor towards an advance or loan. Such excess premium paid to AP could not be taxed under section 2(22)(d) or 2(22)(e). The addition made by the Commissioner (Appeals) was deleted.(AY.2009-10, 2010-11)

Information Technology Park Ltd. v. ITO (2022) 99 ITR 633 (Bang) (Trib)

S. 2(22)(e): Deemed dividend-Unsecured loan from group company-Paid back with interest in the same year-Deletion of addition is valid.[S. 260A]
Held that on facts the Tribunal was justified in holding that deemed dividend provision would not be applicable where assessee availed unsecured loan from its group company which was paid back with interest in the same year (AY. 2012-13, 2013-14, 2014-15)
PCIT v. Govind Promoters (P.) Ltd. (2022) 289 Taxman 42 (Cal)(HC)

S. 2(22)(e): Deemed dividend-Trade advances-Security by way of mortgage-Deletion of addition isjustified.[S. 132, 153A]

Dismissing the appeal of the Revenue the Court held that the advance which was in nature of commercial transactions would not fall within the ambit of word advance in section 2(22)(e) of the Act.

PCIT v. Dwarka Prasad Aggarwal (2022) 140 taxmann.com 32 (Delhi)(HC)

Editorial :SLP dismissed as with drawn due to low tax effect, PCIT v. Dwarka Prasad Aggarwal (2022) 288 Taxman 16 (SC)

S. 2(22)(e): Deemed dividend- Loan to Shareholder- Nature of business of company to lend money- Advanced money to assessee shareholder for exigency and charged interest- Loan not assessable as deemed dividend.
Held, that CIT (A) was justified in deleting the additions as assessee and lender company were engaged in a similar line of business. Further, the lender had charged interest on the advances made to the assessee. The loan was for the business purpose and not individual benefit. (AY. 2011-12 to 2013 -14)
ACIT v . Krishna Coil Cutters Pvt. Ltd. (2022)98 ITR 650 (Ahd)
(Trib)

S. 2(22)(e): Deemed dividend- Loans and advances – Advance to business purposes-Deemed dividend provision is not applicable .

Held that an advance against agreement to sell the property was a trade advance which was in the nature of commercial transaction. Even though the assessee was a substantial shareholder in the company which had made the advance to the assessee, this was not a fit case to invoke the provisions of section 2(22)(e) of the Act. CBDT Circular No. 19 of 2017, dated June 12, 2017 applied to the case of the assessee. Followed CIT v. Raj Kumar (2009) 318 ITR 462 (Delhi)(HC) (AY. 2015-16)

Dy. CIT v. Gurmeet Singh Anand (2022) 98 ITR 85 (SN) (Delhi) (Trib)

S. 2(22)(e): Deemed dividend- Loan to shareholder- Loan made in ordinary course- Separate loan account and trade account of assessee- Loan cannot be treated as deemed dividend at the hands of assessee.

The Tribunal held that no funds of the company were divested, there existed a current account which kept fluctuating according to the requirement of funds that arose in the ordinary course of business, which could not be treated as dividend income under section 2(22)(e). The assessee had filed all details of both the accounts she had with i.e. the loan account and trade account, which were examined by the Joint Commissioner as well as the Commissioner (Appeals). The addition was deleted. (AY.2013-14)

Kankuben Karshanbhai Tejani (Smt). v. Dy. CIT (2022)98 ITR 702 (Surat) (Trib)

S. 2(22)(e): Deemed dividend-Amount received in earlier years – Addition was not justified .

Held that amount received in earlier year , addition cannot be mde as deemed divided for the year under consideration . (AY. 2010-11)

Sunil Kanhaiyalal Gidwani v. ACIT (2022) 216 TTJ 54 (UO) / 140 taxmann.com 21 (Pune)(Trib)

S. 2(22)(e): Deemed dividend - Loans obtained from group companies -Not shareholder of payer group companies - Loan cannot be treated as deemed dividend .

It was held by the Tribunal that since the assessee was not a shareholder of the payer group companies who had advanced loans or advances to the assessee, the amount received by the assessee could not be treated as deemed dividends in the hands of the assessee. (AY.2007-08)

Rainbow Promoters (P.) Ltd. v. ACIT (2022)95 ITR 232 (Delhi)(Trib)

S.2(22)(e)-Deemed dividend- Dividend if at all taxable was taxable in the previous financial year and not in the relevant year – Addition was deleted .

Deemed dividend under Section 2(22)(e) can be taxed in the hands of the assessee only during the assessment year relevant to the financial year when the dividend was received and not otherwise. Addition was deleted. (AY. 2010-2011)

Sunil Kanhaiyalal Gidwani v. ACIT (2022) 216 TTJ 54 (UO) / 140 taxmann.com 21 (SMC) (Pune)(Trib)

S. 2(22)(e): Deemed dividend- Business transaction – Special purpose vehicle – Not shareholder in lender company – Advance for business purpose – Not assessable as deemed dividend

Held that the advance payment was made for Special purpose vehicle for the purpose of business . Deletion of addition is held to be justified . (AY.2013-14)

Dy. CIT v. Aalap Digital Music Pvt. Ltd. (2022)95 ITR 22 (SN)(Delhi) (Trib)

S. 2(22)(e): Deemed dividend-Holding shares more than 10 Per Cent-Loans from companies assessable as deemed dividend .

Heldthat both companies were companies in which public were not substantially interested. The assessee held more than 10 per cent. of the shares in the companies. The companies had credited loans to the assessee. Thus, the basic conditions of section 2(22)(e) of the Act were satisfied. There was no infirmity in the order passed by the Commissioner (Appeals) affirming the addition on account of deemed dividend. *(* AY.2012-13)

Sanjay Subhashchand Gupta v. ACIT (2022) 95 ITR 89 (SN)(Mum) (Trib)

S. 2(22)(e): Deemed dividend-Loan to share holder-Share holding more than 10 percent of shares-Accumulated profits to be considered as on the date of advance of loan-Addition as deemed dividend is justified.

TheAssessee had taken loan from two companies.AO treated said loan amount as deemed dividend under section 2(22)(e) in hands of assessee.Assessee contended that deemed dividend would be attracted where profit was accumulated in immediately preceding year and current year profit accumulation would not attract deemed dividend and since there was no profit accumulation in case of both entities for preceding year, provision of deemed dividend was not applicable. Held that both companies were not companies in which public was substantially interested and the assessee was holding more than 10 per cent shares in both companies. Payment for purpose of section 2(22)(e) should be made to extent to which company possesses accumulated profits and as per provision of Explanation 2 all profits of company up to date of distribution or payment under section 2(22)(e) were to be considered as accumulated profits,therefore, AO was justified in treating loan amount received by assessee as deemed dividend. (AY. 2012-13)
Sanjay Subhashchand Gupta. v. ACIT (2022) 196 ITD 493 (Mum) (Trib.)

S. 2(22)(e): Deemed dividend-Not a share holder of holding company-Not taxable as deemed dividend irrespective of their common shareholders.
Assessee did not hold any shares in holding company.AO treated loan received by assessee from its holding company as deemed dividend under section 2(22)(e) and added same to its income. Held that since assessee-company was not a shareholder of its holding company, amount received from holding company will not be taxable in hands of assessee as deemed dividend and common shareholding in two companies will not attract provisions of section 2(22)(e) of the Act. (AY. 2011-12)
Pallava Resorts (P.) Ltd. v. ITO (2022) 197 ITD 411 (Chennai) (Trib.)

S. 2(22)(e): Deemed dividend-Fixed deposit-Fiduciary capacity-Protect the interest of company-Addition cannot be made as deemed dividend.
Director of MEPL, had withdrawn certain amount from MEPL and kept same as a fixed deposit in his own name in a bank and thereafter transferred entire amount with interest to company. The AO assessed the amount as deemed dividend. Held thatconduct of assessee in refunding the entire amount of fixed deposit with interest supported case of the assessee that amount was withdrawn and kept in FD only to protect the interest of company, AO erred in treating said transaction as deemed dividend. (AY. 2013-14)
ACIT v. AnilkumarPhoolchand Sanghvi. (2022) 197 ITD 439 (Pune) (Trib.)

S. 2(22)(e): Deemed dividend-Loans or advances to shareholders-Deemed dividend can only be assessed in hands of person who is a shareholder of lender company and not in hands of a person other than shareholder
Assessee is a private company and engaged in business of civil construction. During year under consideration had shown unsecured loan from JPIscon Ltd. There were common shareholders in assessee-company and the said common shareholders were holding 50 per cent shares in assessee company and also holding more than 20 per cent shares in JP Iscon Ltd.AO treated the unsecured loan as deemed dividend under provision of section 2(22)(e) by holding that that both parties were closely held company and having common shareholders holding more than 20 per cent shares in each company i.e. assessee company and JP Iscon Ltd. On appeal, Commissioner (Appeals) deleted addition made by AO. On appeal by the

Revenue the Tribunal held that deemed dividend under section 2(22)(e) can only be assessed in hands of person who is a shareholder of lender company and not in hands of a person other than the shareholder. In instant case, assessee-company was not holding any shares or rights of company JP Iscon Ltd,the AO was not justified in invoking provisions of section 2(22)(e) of the Act. (AY. 2007-08)

DCIT v. Amit Intertrade (P.) Ltd. (2022) 194 ITD 585 (Ahd) (Trib.)

S. 2(22)(e): Deemed dividend-Amount received in previous year from an entity in which the assessee was having more than 25% shareholding-No evidence to show that amount received in current year-Addition is not valid.

The assessee received a sum from an entity in which it was having 25% shareholding. The ~~Ld.~~ AO treated the same as deemed dividend u/s.2(22)(e) of the Act. On appeal before the CIT(A), the assessee stated that the sum in question was received and taxed in the immediately preceding year. Considering the same, the CIT(A) remanded the matter to the ~~Ld.~~ AO to further verify whether the amount was actually received and taxed during the previous year. On further appeal, the ~~Hon'ble~~ ITAT held that CIT(A) ought to have dealt with the issue ~~alone~~ as now there is no power with the CIT(A) to restore the matter. Further, as the ~~Ld.~~ DR failed to bring on record any material contrary to the assessee's claim, the addition made was to be deleted.(AY. 2010-11)

Kailash KanhaiyalalGidwani v. ACIT (2022) 216 TTJ 54 (UO)(Pune)(Trib.)

S. 2(22)(e): Deemed dividend-Finance company-Advance loan-Not assessable as deemed dividend.

Held that transaction related to the purchase of property for the purpose of business of Company M/s SCPL and wasnot a gratuitous loan or advance given by the Company to the assessee . Addition was deleted. (AY. 2013-14)

Jitendra Kapildeo Gupta v. DCIT (2022) 64 CCH 359/ 216 TTJ 751 / 212 DTR 71 (Pune)(Trib.)

ACIT v. Subu Chem (P) Ltd(2022) / 216 TTJ 751 / 212 DTR 71 (Pune)(Trib.)

S. 2(22)(e): Deemed dividend-Land purchased in the name of director-Commercial expediency-Addition cannot be made as deemed dividend.

Tribunal held that since land was purchased for company's commercial expediency addition could notbe made as deemed dividend in the hands of director.*(*AY. 2014-15)

Manoj Pati. v. ACIT (2022) 192 ITD 120 (Kol) (Trib.)

S. 2(24)(xviii): Income- Assistance in the form of a subsidy or grant or cash incentive or duty drawback or waiver or concession or reimbursement – Eligible credit under served from India Scheme- Credit to be utilised only against purchase of capital goods and to be set off a portion of excise duty and custom duty only – Does not constitute taxable income [S. 4 , 28(i)]

The Assessing Officer held that entire eligible credit of Rs .129-24 crores under the Served from India Scheme to be receipt taxable as income . On appeal the CIT(A) held that out of the total eligible credit the assessee had utilised sum of Rs .4.36 crores ad 6.44 crores against excise duty and custom duty liabilities and restricted the addition to the sum utilised ,i. e Rs 10.80 crores. On appeal by the assessee and department , the Tribunal held that Served from India Scheme credit is not in the nature of income . Served from India Scheme credit reduced

the capital goods purchased by the assessee and when given to the assessee could be utilised only against purchase of capital goods and to be set off a portion of Excise duty and custom duty and did not constitute taxable income as per section 2(24)(xviii) of the Act . Accordingly the appeal of the assessee was allowed and appeal of the Department was dismissed . (AY. 2015 -16)

Container Corporation of India Ltd v. Dy.CIT(2022) 100 ITR 74 (Delhi)(Trib)

S. 4 : Charge of income-tax-Income or capital-Compensation for cancellation of agreement-Long term capital gain-Income from other sources-Compensation received by assessee to indemnify developer against action by persons who had booked flats through assessee-Taxable ~~income~~ as income from other sources.[S. 2(24), 45, 56]

Assessee, as promoter of society received amount in question from Mr Dalvi Developer as a compensation for cancellation of agreement and for releasing Developer from all obligations arising out of aforesaid agreement.Assessee claimed that amount in issue was not ~~an~~ income subject to payment of income-tax within definition of section 2(24) and, alternatively, it was to be assessed as income from long-term capital gain. On appeal the Court held that amount in issue received by assessee was ~~an~~ income taxable under Act.Court also held that as the assessee had not received amount in issue towards relinquishment of any right or title or interest whatsoever in respect of any immovable property or for that matter 'property of any kind', amount in issue could not be treated as income from long-term capital gain. Amount having been received by assessee to indemnify Developer from any action that might have been taken against him by persons who had booked flats through assessee, was to be assessed as income from other sources under section 56 of the Act. Dismissing the appeal the Court held that the findings of fact recorded by the AO, which had been affirmed by the authorities and the High Court were that the assessee had entered into a memorandum of understanding dated April 10, 1985 with one Developer ~~a developer~~ who was to acquire certain pieces and parcels of the land in Kalyan and thereupon construct residential buildings and apartments, that the assessee had collected funds from prospective members of the proposed society, that these funds were transferred to Developer that subsequently, Developer faced legal problems in acquiring the land and in obtaining clear title and necessary permissions, that thereupon, another memorandum of understanding dated December 1, 1989 was executed between the assessee and Developer pursuant to which the amount received from the proposed members was refunded to the assessee. This sum was not brought to tax as income of the assessee, but another amount of Rs. 29,11,000 received as compensation from Developer by the assessee was brought to tax as income from other sources. On the facts, there was no reason to hold that this amount was not taxable being a capital receipt. Whether or not the amount would be taxable as income from business or income from other sources, need not be examined and answered.(AY.1998-99)

Manoj B. Joshi v.8th ITO (2022) 447 ITR 757/ 220 DTR 301 / 329 CTR 959 / 289 Taxman 623 (SC)

Editorial : Order in Manoj B. Joshi v.8th ITO (2009) 179 Taxman 30 224 CTR 481 (Bom)(HC), affirmed.

S. 4 : Charge of income-tax-Carbon credit-Capital or revenue-Receipt from sale of carbon credit was a capital receipt and hence not liable to tax. [S. 28(i))]

Dismissing the appeal of the Revenue the Court held that receipt from sale of carbon credit (i.e. Carbon Emission Reduction (CER) credit) received is a capital receipt and, hence, not liable to tax.(AY. 2012-13)

PCIT v. ChemplastSanmat Ltd. (2022) 142 tamann.com 515(Mad)(HC)

Editorial: Notice issued in SLP filed by Revenue,PCIT v. ChemplastSanmat Ltd. (2022) 289 Taxman 168 (SC)

S. 4 : Charge of income-tax-Retention money-Income to be booked in the year of actual receipt [S. 5, 145]

Dismissing the appeal of the Revenue the Court held that retention money retained by contractee being deferred payment and contingent upon satisfactory completion of contract work, assessee would have no vested right to receive same in year in which it was retained; income was to be booked in the year of actual receipt (AY. 2014-15)

PCIT v. EMC Ltd. (2022) 289 Taxman 29 /(2023) 450 ITR 691 (Cal)(HC)

S. 4 : Charge of income-tax-Loss of source of income-The amount received under the deed for restrictive covenant as a capital receipt not liable to tax. [S. 7(1)(iv), 17(3)(i), 28(va), Art, 226]

The appellant was whole time Director. In view of his capabilities and knowledge and in order to ensure that appellant did not act/harm the interest of the company upon termination of his employment, the company entered into non-compete agreement dated termed as Deed for Negative Covenants imposing certain restriction on appellant from carrying out certain professional activities over a period of 10 years after the termination of his employment**.**In lieu of appellant agreeing not to compete with the company for a period of 10 years after termination, under Article 2 of the agreement the company agreed to pay Rs.2 Crores to appellant. The company satisfied such payment by allotting 20,00,000 Equity Shares of the nominal face value of Rs.10 each to appellant. The AO assessed the amount as perquisite under section 17(1)(iv read with section 17(3)(i) of the Act.The addition was affirmed by the CIT(A) and Tribunal. On appeal the court held that the agreement expressly provides that appellant shall not directly or indirectly engage in or be concerned or connected with any business which is similar to and/or in competition with the business of the company in the metro cities of Bombay, Delhi, Ahmedabad and Bangalore and appellant shall not directly or indirectly control or operate or cause to control or operate or participate in any similar business in the metro cities. In fact, the agreement goes to the extent of even stating that appellant shall not associate himself or be an advisor, employee or be a partner in any similar business as that of the company and he shall cease and desist from participating in similar business activities as that of the company and not to use his goodwill or expertise in respect of similar business as that of the company. To that extent, ~~in our view~~ it was loss of source of income for him in the future. The agreement, i.e., the deed for negative covenants was an independent obligation undertaken by appellant with the company in same field for a period of ten years. Therefore, the compensation attributable to restrictive covenant, i.e., 20,00,000 Equity Shares of Rs.10/-each in the hands of appellant was a capital receipt in as much as it was appellants' profit making capabilities for a period of ten years from the date of appellant leaving the employment of the company either on his own or in association with professional competitors. Appeal was allowed.Followed Guffic Chem P Ltd. v. CIT (2011) 332 ITR 602 (SC) (AY. 2003-04). As the appeal was allowed, the Writ petition of the appellant was dismissed.

Neville Tuli v. ITO (2022) 213 DTR 1/ 326 CTR 432 (Bom)(HC)
Neville Tuli v. ITAT (2022) 213 DTR 1/ 326 CTR 432 (Bom)(HC)

S. 4 : Charge of income-tax-Carbon credit-Power generation-Capital receipt not liable to be taxed.

Held that proceeds realized by assessee-company, engaged in business of power generation through non-conventional sources i.e., windmills, on sale of certified emission reduction credit, which was earned on clean development mechanism in its wind energy operations was a capital receipt and hence, was not liable to be taxed. (AY 2009-10)
CIT v. Wescare (I) Ltd. (2022) 138 Taxmann.com 184 (Mad)(HC)

Editorial: Notice issued in SLP filed by Revenue, CIT v. Wescare (I) Ltd. (2022) 287 Taxman 93/ 113 CCH 273 (SC)

S. 4 : Charge of income-tax-Income or capital-Sale of Carbon Credits-No cost of acquisition-Capital receipt-Subsidy-Technology upgradation fund-Compensation on non-performance of the energy generation-Capital receipt.[S. 28(i), 80IA]
Held that the proceeds realized by the assessee on sale of certified emission reduction credit, which the assessee had earned on the clean development mechanism in its wind energy operations, was a capital receipt and not taxable. The sale of carbon credits was to be considered a capital receipt and not liable for tax under any head of income and that there was no cost of acquisition or cost of production to get entitlement for the carbon credits. S. P. Spinning Mills (P) Ltd. v. ACIT [2021] 433 ITR 61 (Mad) (HC) followed. Court also held that the technology upgradation fund subsidy and the compensation receivable on non-performance of the energy generation were capital receipts and not liable for tax under any head of income.*(*AY. 2011-12)

CIT v. BEST Corporation Ltd. (2022)446 ITR 211 (Mad)(HC)

S. 4 : Charge of income-tax-Income or capital-Subsidy received from Government for upgrading of Infrastructure facilities-Capital receipt.[S.115JB]

Held that the subsidy was given towards administrative expenses incurred by the assessee-company during the execution of project for upgradation of infrastructure facilities for expansion of the infrastructure facility fell in the category of "capital". It was not a revenue receipt. *(*AY. 2010-11)

CIT (E) v. Narmada Clean Tech Ltd. (2022) 446 ITR 366 (Guj)(HC)

S. 4 : Charge of income-tax-Transfer of rights-Transfer is genuine –Set off credit-No evidence-Deletion of addition is valid [S. 28(iv)]

Held that the Revenue failed to produce any cogent material to prove that the assessee received over and above the disclosed consideration of Rs. 2 crores. Order of Tribunal was affirmed.(AY. 1998-99, 2000-01 to 2003-04)

CIT v. Tube Investments of India Ltd. (2022) 446 ITR 676/ 288 Taxman 524 / 220 DTR 383 / 329 CTR 986 (Mad)(HC)

S. 4 : Charge of income-tax-Capital or revenue-Compensation received-Non-achievement of performance parameters-Capital receipt. [S. 28(i), 43(1)]

Held that That the Tribunal after considering the findings recorded by the Commissioner (Appeals) examined the settlement which was executed between the assessee and the U. K. company which showed that the compensation was given on account of non-achievement of performance parameters. After noting the relevant clauses in the settlement agreement, the Tribunal held that the condition specified in section 43(1) of the Act for deducting the actual cost from value of the machines was applicable to the compensation amount paid to the assessee. There was no error in the approach of the Tribunal or that of the Commissioner (Appeals).*(*AY. 2005-06)

PCIT v. XPRO India Ltd. (2022) 446 ITR 668/ 217 DTR 265 / 328 CTR 593/ 289 Taxman 283 (Cal)(HC)

S. 4 : Charge of income-tax-Capital or revenue-Compensation received on account of failure of performance guarantee-Matter remanded to Tribunal.[S. 254(1)]

The assessee received compensation from Suzlon Energy Ltd on account of failure of performance guarantee parameters of capital assets namely wind turbine generators. The AO assessed the said receipt as revenue receipt. The Tribunal affirmed the order of the AO. On appeal allowing the appeal of the assessee the Court remanded the matter to the Tribunal for ~~a~~ fresh consideration to consider the legal issue which was decided by the Supreme Court in CIT v. Saurashtra Cement Ltd (2010) 325 ITR 422 (SC) (AY.2008-09)

Essel Mining and Industries Ltd. v. PCIT (2022) 444 ITR 576 / 209 DTR 180/ 324 CTR 124 (Cal)(HC)

S. 4 : Charge of income-tax-Capital or revenue-Investment of funds before commencement of operation-Fixed deposits and mutual funds-Not revenue receipt.[S. 10(35), 28(i), 145]

Dismissing the appeal the Court held that unutilized funds of the project, before the commencement of the functional operation of the project, was invested by the assessee in fixed deposits and mutual funds as per the directions of the Government. A perusal of the Government order dated March 25, 2008, it was clear that the income generated out of earlier release of State Government for its project would have to be converted into State's equity towards the project and could not be counted as income of the assessee. There was no profit motive as the entire funds entrusted and the interest accrued therefrom had to be utilized only for the purpose of the scheme. Thus, it had to be capitalized and could not be considered as revenue receipts.(AY.2007-08, 2008-09)

CIT. v. Bangalore Metro Rail Corporation Ltd. (2022)441 ITR 113 / 285 Taxman 491 (Karn) (HC)

S. 4 :Charge of income-tax-Interest from short term deposits (STDs)-Open letter of Credit for procuring Plant and Machineries-Capital receipts-Reduced from cost of capital assets.[S. 28 (1), 56]

Allowing the appeal of the assessee the Court held that interest earned from Short Term Deposit Receipts (STDRs) made by appellant to enable it to open Letter of Credit (LoC) for procuring plant and machineries is incidental to such acquisition and should be treated as receipt of a capital nature and not taxed as income. It has to be reduced from the cost of capital assets.Followed CIT v. Karmal Co-Operative Sugar Mills Ltd (2000) 243 ITR 2 (SC) (AY. 1998-99)

NeelachalIspat Nigam Ltd. v. ACIT (2022) 284 Taxman 527 (Orissa)(HC)

S. 4: Charge of income-tax -Capital or Revenue- Carbon Credits- Capital Receipt.

The assessee received "carbon credits" based upon the total carbon emission reduction made by the company during the calendar year. It was based upon the power generation by the assessee-company. The Assessing Officer treated the amount in question as a revenue receipt instead of a capital receipt. The CIT(A) allowed the claim of the assessee. The Tribunal held that CIT (A) was justified in its decision and there was no ground to interfere. (AY. 2011-12)

Oswal Woollen Mills Ltd. v Add. CIT (2022)98 ITR 521 (Chd) (Trib)

S. 4 : Charge of income-tax -Capital or Revenue – Cancellation of agreement – Right to sue - Compensation or damages for relinquishment of right in property – Avoid legal consequences – Not colourable device – Not taxable as revenue receipt [S. 2(14),2(47), 25, 28(i), 45]

Held that the assessee is engaged in the activity of share trading and not in real estate activity, it cannot be held that the assessee was intending to acquire part of the commercial-cum-residential building from the developer JRPL as stock-in-trade and, therefore, the compensation received by the assessee from JRPL in lieu of relinquishment of right in the said property in terms of the relinquishment agreement is not chargeable to tax, transactions arranged by the assessee along with JRPL was cannot be said to be colourable device. Accordingly the compensation received is not chargeable to tax . Followed CIT v. Abbasbhoy A .Dehgamwalla & Ors (1992) 195 ITR 28 / 101 CTR 425 (Bom) (HC), Bhojison Infrastructure (P) Ltd v. ITO (2018) 173 ITD 436 (Ahd)(Trib) (2011-12)

Khevana Securities & Finstocks Ltd. v. ITO (2022) 215 TTJ 775 /211 DTR 45 (Ahd) (Trib)

S. 4 : Charge of income-tax -Capital or revenue — Compensation for termination of marketing support agreement —No loss of source of income —Not capital nature assessable as business income . [S. 28(i)]

Held that there was no restriction on the assessee to carry out its activity of marketing support services to anyone upon cancellation of the contract. There was no damage or impairment to the assessee's trading structure nor removal of any employee of the marketing team by way of amendment to the agreement and, therefore, there was no loss of source of income. The entire marketing team was capable of rendering services as was the case before termination of the agreement. Since there was no error in the order of the Dispute Resolution Panel, it was to be upheld.(AY. 2015-16)

Dow Chemical International P. Ltd. v .ITO (2022) 100 ITR 82 (Mum)(Trib)

S. 4 : Charge of income-tax -Capital or revenue -Sale of carbon credits – Capital receipts [S. 28(i)]

Held that where carbon credit was not an offshoot of business of assessee but an offshoot of environmental concerns, income from sale of carbon credits was to be considered as capital receipt. (AY. 2011 - 12

ACIT v. Nahar Industrial Enterprises Ltd. (2022) 219 DTR 73 / 219 TTJ 544 / 99 ITR 562 / 142 taxmann.com 52 (Chd)(Trib)
ACIT v. Nahar Spinning Mills Ltd (2022) 219 DTR 73 / 219 TTJ 544/ 99 ITR 562 / 142 taxmann.com 52 (Chd)(Trib)

ACIT v. Oswal Woollen Mills Ltd. (2022) 219 DTR 73/ 219 TTJ 544 /99 ITR 562 / 142 taxmann.com 52 (Chd)(Trib)

S. 4 : Charge of income-tax – Capital or revenue - Subsidy- Incentive to encourage development of rural economy- Exemptions from payment of Sales tax/Entry Tax/Electricity dues- Capital receipt- Forfeited amount received in respect of preference shares- Credited receipt in capital reserve account- Capital receipt . [S. 5, 28(i)]
Held that the taxability of a receipt given by way of subsidy essentially has to be determined with regard to the purpose for which the subsidy is granted. The manner in which the concession is given is not material. If the intent of the concession or rebate is the development of the rural economy and upliftment of backward areas, it would be in the nature of a capital receipt not liable to tax. Forfeited amount received in respect of preference shares which is credited in capital reserve account is capital in nature . (AY. 2003 -04 ,2006 - 07 to 2008 -09)
Jindal Steel and Power Ltd v. Add. CIT (2022)97 ITR 516 (Delhi) (Trib)

S. 4 : Charge of income-tax - Firm -Partner –Double taxation – Wrong person assessed - Sale to partner without registration in earlier years -Registration deed in latter years – taxable in the year of registration – Partner declaring the income is his hands and paying taxes- Department entitled to tax income in hands of correct person — Partner at liberty to take remedial action for exclusion of amount from his total income [S. 2(24), 145, Registration Act , 1908, S. 17(1A) 49]

It was held that admittedly no registered sale deed was executed in the financial year 2011-12, when the sale took place from the assessee-firm to the partner. No transfer of the immovable property could, therefore, be said to have taken place in the financial year 2011-12, when the assessee claimed to have transferred the property to him, but did not execute any registered sale deed. It was only in the year under consideration when the assessee transferred the property by means of a registered sale deed to A and M that the transfer took place in the hands of the assessee.It further held that the fact that the partner included the amount of Rs. 28.35 lakhs in his total income and paid taxes thereon was not germane to the issue. Simply because a wrong person had been assessed that would not deter the Department from assessing the right person. However, double taxation of the same amount in two hands

could not be permitted. The partner who had included Rs. 28.35 lakhs in his return for the AY under consideration and paid taxes thereon, was free to take remedial action for exclusion of the amount from his total income as per law. Referred CIT v. Balbir Singh Maini (2017) 398 ITR 531(SC), ITO v. Ch. Atchaiah (1996) 218 ITR 239 (SC)(AY. 2015-16)

Prathamesh Developers v. ITO (2022) 96 ITR 75 (SN) (Pune) (Trib)

S. 4 : Charge of income-tax - Co-Operative Sugar Factory — Sale of sugar at concessional rate to members —Matter remanded to the Assessing Officer. [S. 2(24)]

It was held that the issue of the price of concession sugar could be decided only on the touchstone of the relevant factors noted by the Supreme Court in Krishna Sahakari Sakhar Karkhana Ltd (2014) 3 ITR-OL.462(SC) . The matter was to be remanded to the Assessing Officer for fresh consideration whether or not the difference between the average price of sugar sold in the market and that sold to members at a concessional rate was an appropriation of profits, in the light of the directions given by the Supreme Court. (AY 2014-15, 2015-16)

Sant Tukaram Sahakari Sakhar Karkhana Ltd. v. ITO (2022)96 ITR 72 (SN) (Pune) (Trib)

S. 4 : Charge of income-tax - Industrial undertakings - Incentive Scheme - Subsidy Intended to encourage Industrialisation of State — Capital in nature . [S.80IB]

Held, allowing the assessee's appeal to the extent recalled, (i) that once the object of the subsidy is to industrialise a State, it is a capital receipt. Accordingly, the sales tax incentive money retained by the assessee in accordance with section 41 of the West Bengal Sales tax Act, 1944 read with the West Bengal Incentive Scheme, 1999, was a capital receipt not chargeable to tax under the Income-tax Act, 1961. (AY.2003-04)

TATA Chemicals Ltd. v. Dy. CIT (2022)95 ITR 134/ 216 TTJ 402 (Mum)(Trib)

S. 4 : Charge of income-tax – Subsidy – Industrial promotion scheme - Capital receipt . [S. 28(i)]

Subsidy received under Industrial Promotion scheme is with an intent of promotion and incentivising specific lines of business. The Purpose test elaborated under the Apex Court decision in Ponni Sugar was applied to consider/classify the subsidy as a capital receipt. (AY. 2013 -14)

Mahindra Two Wheelers Ltd. v. Dy. CIT (2022) 219 TTJ 136 / 218 DTR 210 / 140 taxmann.com 367 (Mum) (Trib)

S. 4: Charge of income-tax-Horse racing-Commission income-Diversion of, by overriding title-Winning payments to public and betting tax payable to State government had an overriding title on gross receipts-Matter remanded to the AO for verification.[S. 148]

Assesseeis engaged in activity of conducting horse racing and on and off course betting.Assessee received amounts from innumerable customers who were public at large by way of betting in respect of each racing event and immediately on completion of each race, assessee was required to make payment on winning tickets-Public placed bets either at

totalizator or with registered bookmakers.Assessee only accounted for commission income received from totalizators and bookmakers on ground that winning payments to public and betting tax payable to State government had an overriding title on gross receipts of assessee and would not form part of assessee's income.AOreopened on ground that assessee should have declared entire amount received at betting counter as its income and disbursement of prize money/dividend as its expenditure and made additions in income of assessee. Held that in assessee's own case for assessment year 2010-11, Tribunal held that race clubs formulate their own betting rules regarding betting, totalization, dividend and since assessee had filed a copy of its betting rules which was not considered by AO, matter was to be remanded for reconsideration.(AY. 2009-10, 2013-14)

Mysore Race Club Ltd. v. ACIT (2022) 196 ITD 140 (Bang) (Trib.)

S. 4 : Charge of income-tax-Subsidy-Capital or revenue-Sales tax incentive-Investment in backward area-Excise Duty incentive-Capital receipt.[S. 28(i)]

Held that subsidy on account of sales tax incentive was granted toencourage investment in backward areas of State of Maharashtra is capital receipt.Excise Duty incentive was granted with object of creating avenues for perpetual employment, to eradicate social problem of unemployment in State by accelerated industrial development, is a capital receipt. (AY. 2010-11)

Everest Industries Ltd. v. DCIT (2022) 196 ITD 563 (Mum) (Trib.)

S. 4 : Charge of income-tax-Business income-Sales tax subsidy-West Bengal Incentive Scheme, 1999-Capital Receipt-Not taxable. [S. 28(i), West Bengal Incentive Scheme, 1999]

The sales tax remission receipt by the assessee is covered by the West Bengal Incentive Scheme, 1999. The Scheme can either defer the sales tax payment or provide remission of the Sales tax on the sale of finished goods. The Tribunal, following the decision of the Supreme Court in the case of CIT v. Ponni Sugar & Chemicals Ltd (2008)306 ITR 392 (SC), noted that the object for which the subsidy/assistance is given determines the nature of the incentive subsidy, and the mechanism is irrelevant. In the present case, once the object of subsidy is to industrialize the state, it is capital receipt. (AY. 2003-04)

Tata Chemicals Ltd. v. Dy.CIT (2022) 95 ITR 134/ 216 TTJ 402 (Mum) (Trib)

S. 4 : Charge of income-tax-Accrual of income-Retention money Retained by Electricity Board subject to fulfilment of no-defect or liability-Cannot be treated as income-Sum taxable only in year of receipt or accrual. [S. 5, 145]

Held, that in year under consideration, since no enforceable liability had accrued or arisen, it could not be said that the assessee had any vested right to receive the retention money. The assessee had no right to claim any part of the retention money till the verification of the satisfactory execution of the contract was over. Therefore, the retention money retained by the Electricity Board could not be treated as income of the assessee even though the assessee due to mistake of fact had offered it as income of this year in its return of income. When the assessee received or when this amount accrued to the assessee, it should be taxed in that AY and not in this AY.(AY. 2015-16, 2017-18 to 2019-20)

Lumino Industries Ltd. v.ACIT (2022) 94 ITR 675/ 215 TTJ 62/ 213 DTR 290 (Kol)(Trib)

S. 4 : Charge of income-tax-Mutuality-Club-Guests fees from members, hire charges, income from rooms and housie participation fees-Not chargeable as income.

Dismissing the appeals of the Dept. the Tribunal held that since in the assessee's own case for several earlier years, a consistent stand had been taken by the Tribunal right from the beginning that the additions made by the AO on account of guests fees from members, hire charges, income from rooms and housie participation fees could not be sustained as the principle of mutuality was applicable, there was no infirmity in the order giving relief to the assessee on this issue.*(*AY. 2014-15, 2015-16)

Dy. CIT v. Sports Club of Gujarat Ltd. (2022)94 ITR 54 (Trib) (SN)(Ahd)(Trib)

S. 5 : Scope of total income – Accrual of income – Receipt of tuition fees – Services rendered next year – Income taxable in the year in which the service was rendered . [S. 4 ,5(1)(b), 145]

Dismissing the appeal of the Revenue the Tribunal held that though the tuition fees for the last quarter received , the services were rendered in next financial year, the income will be taxable in the year in which the service was rendered. Followed CIT v. Dinesh Kumar Goel (2011) 331 ITR 10 (Delhi)(HC) (AY. 2012 -13 to 2016 -17)

Dy.CIT v. Hyderabad Educational Institutions (P) Ltd (2022) 218 TTJ 487 (Hyd)(Trib)

S. 5 : Scope of total income-Resident in India –Long term capital gains-Shares held in UAE based company-Taxable as per the provisions of Indian Income-tax and not as per article 13 of DTAA-DTAA-India-UAE [S. 6(1), 9(1), Art. 13]

During year under consideration, assessee-Indian resident, sold shares held in UAE based company and earned long term capital gain (LTCG). It claimed exemption of same from taxation by virtue of article 13 of DTAA between India and UAE Held that since assessee was an Indian resident, taxability of said LTCG was to be determined as per Income-tax Act. Therefore benefit of exemption sought by assessee under article 13 of DTAA that deals with capital gains on alienation of shares was rejected. (AY. 2015-16)

PrabhukumarAiyappaKullatira. v. ITO 2022] 197 ITD 58 (Bang) (Trib.)

S. 5 :Scope of total income-Accrual-Interest Income qua ICDs whose recovery is doubtful and legal proceedings have been initiated-Held, addition of Interest on ICDs cannot be sustained.[S. 4, 145]

Assessee company had advanced certain amounts being ICDs, which were doubtful of recovery, and the legal action was initiated against said parties. The said ICDs were shown as doubtful of recovery and no interest was provided on said doubtful ICDs. AO was of the view that, as assessee company has yet not given up its claim, by initiating criminal proceedings and suits for recovery against defaulting parties, assessee was required to account for interest income as per the mercantile system of accounting, and thus added notional interest on impugned deposits in question, which was upheld by CIT(A). On Appeal the Tribunal held that;

a) Though the assessee company has not given up its claim and was hopeful of recovery, nor the amounts were w/off in books cannot be the determinant factor to hold that interest income has accrued.
b) Furthermore, in the instant case as the department itself has ~~accepted~~ in other years accepted, that no addition qua the interest income on accrual basis with respect to

ICDs which are doubtful of recovery, addition in the year under consideration cannot be sustained (AY.2004-05 & 2005-2006)

Frick India Ltd.v. DCIT (2022) 216 TTJ 146 (Delhi)(Trib.)

S. 6(1) : Residence in India-Individual-Status-182 days-While counting days of stay in India for considering status of 'resident', day of arrival has to be excluded. [S. 3(1)(b)]

The assessee is a non-resident. The assessee claimed that he stayed in India during the year under consideration for 175 days where as revenue contended that assessee stayed in India for 184 days. The assessee contended that both the date of arrival and date of departure from India as made by the revenue is not correct. On appeal the Tribunal held that while counting days of stay in India for considering status of 'resident', day of arrival has to be excluded.On facts the assessee having stayed in India during year under consideration for less than 182 days could not be considered as a resident of India in the year under consideration. (AY. 2016-17)

Pradeep Kumar Joshi v. ITO (2022) 192 ITD 577 (Ahd) (Trib.)

S. 9(1)(i): Income deemed to accrue or arise in India-Business connection-Liaison office-Supply of information having preparatory or auxiliary character-Would not constitute Permanent Establishment-DTAA-India-Mauritius [Art. 5, 2(c), 5(3)(ii)]

Dismissing the appeal of the Revenue the Court held that place of business of the assessee in India was only for supply of information having preparatory or auxiliary character and same would fall under article 5(3)(e)(ii) and did not constitute 'PE' as per article 5(2)(c) of Indo-Mauritius DTAA. Order of Tribunal affirmed. (AY. 1998-99)

CIT (IT) v. J. Ray Mc Dermott Eastern Hemisphere Ltd (2022) 288 Taxman 574 (Bom)(HC)

Editorial: Affirmed, ADIT v. J. Ray Mc Dermott Eastern Hemisphere Ltd (2016) 158 ITD 923 /180 TTJ 660 (Mum)(Trib)

S. 9(1)(i): Income deemed to accrue or arise in India - Business connection – Trading-Not furnished supporting documents – Matter remanded - DTAA-India –Japan. [Art. 5(7)(a)]

Held that Revenue is required to look into whether the Indian entity acted as PE/dependent agent PE on behalf of the assessee-company, fact as to whether IIPL has the authority to conclude contracts, or it maintains a stock of goods from which it deliver goods on behalf of the assessee or does it secure orders for the assessee, has to be verified by the AO first. Matter is remanded to the AO to adjudicate the issue afresh. (AY.2013 -14, 2015 -16)

ITO v. CHU Corporation v. ACIT (IT) (2022) 215 TTJ 680 (Delhi)(Trib)

S. 9(1)(i): Income deemed to accrue or arise in India - Business connection – Profits derived from baggage screening services and aircraft handling services provided to other airlines - Will not come within ambit of 'other activity directly connected to such transport- Not covered under article 8(1) - Technical Pool (IATP)- Services from airlines on reciprocal basis, profit derived from providing baggage screening services and aircraft handling services to other airlines as a participant of IATP pool would be covered under article 8(1) read with article 8(4) DTAA -India -USA [Art.7, 8(1),8(2), 8(4)]

Assessee-company, a US tax resident, engaged in operating airlines in international traffic for carriage of passengers and goods and in providing services incidental to such operation

.Assessing Officer held that income from providing baggage screening services to other airlines to be taxable as business profits under article 7 since assessee had a PE in India and was not covered article 8(1) read with article 8(2) on basis that said activity was not directly connected with operation of aircraft . Commissioner (Appeals) confirmed additions made by Assessing Officer . Tribunal held that profit derived by assessee from baggage screening services and aircraft handling services provided to other airlines was in no way connected to assessee's activity of transportation of passengers, mail, livestock or goods etc. by air in its own aircrafts . Assessee itself stated that when not required for its own use, for optimum use of equipment and manpower deployed at IGI airport, services were provided to other airlines, evidencing that provision or non-provision of these services would not affect assessee's air transportation activity. Therefore, income from baggage screening services and aircraft handling services provided to other airlines will not come within ambit of 'other activity directly connected to such transport' as provided under article 8(2)(b) of India-USA Tax Treaty and thus would not be covered under article 8(1) . Assessee, foreign airline, as member of International Airlines Technical Pool (IATP), provided and received services from airlines on reciprocal basis, profit derived from providing baggage screening services and aircraft handling services to other airlines as a participant of IATP pool would be covered under article 8(1) read with article 8(4) of India-USA Tax Treaty Therefore, profit derived from providing baggage screening services and aircraft handling services to various other airlines in India will not be taxable in India under article 8(1) read with article 8(4) of the India-USA Tax Treaty . (AY.1996-97 to 2002-03)

United Airlines v. Dy. CIT (2022) 218 TTJ 698 / 138 taxmann.com 137 (Delhi)(Trib)

S. 9(1)(i): Income deemed to accrue or arise in India - Business connection – Business service agreement (BSA) –Activities are interconnected- Maatter was remanded - DTAA- India -Norway [Art . 5(2)(1)]

Tribinal held that the activities of assessee with regard to recipients for services were inter-connected, inter-laced and sequential technical services . The receipts being based on unified agreement and consolidated billing pattern, activities being inter-related, existence of PE of assessee was undeniable and issue of determination of profits was remanded back to file of Assessing Officer . (AY. 2010-11)

Telenor ASA v. Dy. CIT (IT) (2021) 129 taxmann.com 198 / (2022) 215 TTJ 563 (Delhi)(Trib)

S. 9(1)(i): Income deemed to accrue or arise in India - Business connection – Non - Resident Bank - Banking Company incorporated in Korea – Interest paid to head office – Allowable as deduction-Interest paid by PE to head office could not be brought to tax in hands of assessee-bank, even though it was allowed as deduction in computation of profits attributable to PE.[Art. 7(2) , 11]

Assessee non-resident bank claimed deduction for interest paid by Indian PE to head office with respect to funds borrowed by PE from head office . Assessing Officer denied said claim on ground that branch and head office constituted same legal entity. Assessing Officer held that interest income received from head office was to be accounted for in profits attributable to PE . Tribunal held that profits attributable to PE were to be computed on basis of hypothetical independence of PE from head office as provided in article 7(2), thus, interest

paid by PE was to be allowed as deduction and interest received by PE from head office was to be treated as its income .

Fiction of hypothetical independence as determined under article 7(2) was for limited purpose of profits attributable to PE and could not be used for computation of profits of assessee, thus, interest paid by PE to head office could not be brought to tax in hands of assessee-bank, even though it was allowed as deduction in computation of profits attributable to PE . (AY.2007-08)

Shinhan Bank v. Dy. DIT (IT) (2022) 218 TTJ 401 / 217 DTR 113 / 139 taxmann.com 563 (Mum)(Trib)

S. 9(1)(i): Income deemed to accrue or arise in India - Business connection - Providing services of qualified motor racing drivers to teams participating in racing championships — Athlete - Details of actual duration of drivers' stay in India in connection with race, time taken for preparation, finalization and conclusion and certificate of drivers' arrival in India and departure in relation to event not furnished-Matter Remanded — DTAA – India – Switzerland [Art , 5 , 16]

The Tribunal held that the reference by Dispute Resolution Panel to OECD commentary in the context of the model tax treaty that the Formula One driver was in the nature of an athlete had to be considered. That the assessee was not in a position to provide details as to the actual duration of the drivers' stay in India in connection with the race, the time taken for preparation, finalization and conclusion and the certificate of the drivers' arrival in India and departure in relation to the event. These were crucial aspects and had not been examined by the authorities below. The matter was to be remanded to the Assessing Officer for examination. It was held that the reference by the Dispute Resolution Panel to the receipts being in the nature of income derived from service of personal activities of racing car drivers in India fell under article 16 of the DTAA between India and Switzerland which deals with the issue of artists and athletes. This aspect was also to be remanded to the Assessing Officer and the assessee shall be granted an opportunity to give the submissions in this regard. Further it stated that as regards the other aspects held adversely against the assessee regarding absence of information which have led to adverse inference being drawn, an opportunity was to be granted to the assessee to comply. (AY. 2012-13, 2013-14)

GSA Gestions Sportives Automobiles Sa v . Dy. CIT (IT) (2022) 96 ITR 28 (SN)(Delhi)(Trib)

S. 9(1)(i): Income deemed to accrue or arise in India - Business connection -Purchase of equipment and other material to be used in manufacturing process —Remand for limited purpose - Assessing Officer exceeded jurisdiction — Assessment order quashed-Transactions on principal-to-principal basis-Non-Resident enterprise cannot be treated to have Permanent Establishment in India -Not liable to deduct tax at source . [S. 5(2)(b) ,195]

Held that the Tribunal had set aside the order to the Assessing Officer on the limited issue to verify whether any of the foreign suppliers had a permanent establishment in India under the respective Double Taxation Avoidance Agreements. The Tribunal had held that the installation or supervisory services in connection with sale of machinery or equipment had to cross the specified time threshold limit for the non-resident entity to be treated as having a permanent establishment in India. The Assessing Officer while passing the order had not followed the directions of the Tribunal and had relied on the provisions of section 5(2)(b) read with section 9(1)(i) of the Act to hold that the non-resident entities had a business connection in India. Further, the Assessing Officer had failed to bring in material on

record to establish that the foreign suppliers had a permanent establishment in accordance with the Double Taxation Avoidance Agreements and the decision of this Tribunal. Thus, the Assessing Officer had clearly exceeded his jurisdiction in making enquiries and examining issues which were clearly beyond the ambit of the set aside proceedings directed by the Tribunal. Held that The Indian entities (agents) did not have any authority to conclude contracts on behalf of the non-resident suppliers and the Indian entities did not maintain any stock of goods or merchandise on behalf of the non-resident entities in India and the Indian entities or agents were not mainly or wholly securing orders on behalf of the non-resident in India. Therefore, the findings of both authorities as to the existence of permanent establishments of the vendors in India deserved to be set aside and the findings of the Commissioner (Appeals) in treating the assessee in default for not charging tax under section 195 of the Act was reversed.(AY.2010-11, 2011-12)
Birla Corporation Ltd. v. ITO (IT) (2022)95 ITR 418 (Indore) (Trib)

S. 9(1)(i): Income deemed to accrue or arise in India - Business connection - Service Order Forms have commercial coherence and there is one contract for providing services- Amounts to be taxed as business profits- Matter remanded to AO to compute business profits in accordance with DTAA - DTAA -India –Norway . [S. 144C Art . 7] [S.144C]
The activities of the assessee are inter laced and interconnected and it cannot be said that the assessee is carrying on separate activities by visiting India from Norway on different dates for different work to refute the existence of a PE in India. They are a bundle of interconnected services giving rise to a PE under one project. Profits attributable to PE are to be computed by the AO accordingly.(AY. 2010-11)
Telenor ASA v. DCIT (2022) 215 TTJ 563 (Delhi) (Trib)

S. 9(1)(i): Income deemed to accrue or arise in India-Business connection-Dubai branch-Referral fee-Swiss company received fee from an Indian company for referring an Indian resident client for bringing out issue of convertible bonds-Fee is in nature of commission to be taxed as business income and not as fees for technical services-Fee not attributable PE in India the same is not taxable in India-DTAA-India-Switzerland [S. 9(1)(vii), Art, 7, 12]
Dubai Branch of assessee-Swiss company received referral fee from an Indian company for referring an Indian resident client for bringing out issue of convertible bonds. Held that referral fee is in nature of commission to be taxed as business income and not as fees for technical services. Since impugned fee could not be considered to be attributable to assessee's PE in India, same is not liable to be taxed in India as per article 7. (AY. 2015-16)
ACIT (IT) v. Credit Suisse AG. (2022) 197 ITD 209 (Mum) (Trib.)

S. 9(1)(i): Income deemed to accrue or arise in India-Business connection-Brokerage income from NRRs and did not work wholly and exclusively for co-broker, assessee was not dependent agent permanent establishment of said co-broker in India-Not dependent agent permanent establishment of said co-broker in India-DTAA-India-Singapore [S. 195, Art. 5, 7]
Assessee, a licensed broker with IRDAI, was making payment of reinsurance premium received from Indian insurance company to non-resident reinsurers (NRRs). As per IRDA guidelines, assessee broker was entitled to work in conjecture with overseas co-broker which in instant case was AB, Singapore.AO held that assessee was Dependent Agent Permanent Establishment (DAPE) of AB in India as per provisions of article 5 of India-Singapore DTAA, thus, premium paid by assessee to NRRs through AB was taxable in India and TDS

was to be deducted on same. Held that the assessee is an independent broker under IRDA and worked on 'principal to principal' basis with its co-broker and also worked with other several persons/entities.Assessee had earned majority of its brokerage income from NRRs without having any transaction with AB Singapore or involvement of AB Singapore.On facts, assessee was not DAPE of AB Singapore in India. Not liable to deduct tax at source. (AY. 2016-17)

ITO (IT) v. International Reinsurance and Insurance Consultancy & Broking Services (P.) Ltd. (2022) 197 ITD 198 /(2023) 222 TTJ 515/ 224 DTR 29 (Mum) (Trib.)

S. 9(1)(i): Income deemed to accrue or arise in India-Business connection-Permanent Establishment-Agency PE-Computer information system (CRS)-Computer, electronic hardware/software and connectivity is provided through third party nodes located in India-Constitute PE of and income arising from airlines and travel agents is attributable to activities of PE in India and taxable in India-Income attributable to assessee's PE in India was to be determined at 15 per cent instead of 75 per cent as determined by AO.-Royalties/Fees for technical services-CRS and ARS was installed at airport which could be accessed only by airlines, payments made in relation to ARS could not be characterised as royalty either under section 9 or under India-Spain DTAA-DTAA-India-Spain [S. 9(1)(vi), 9(1)(vii), Art. 5, 13]

Assessee-company, tax resident of Spain, developed a computer information system (CRS) which facilitated reservations, communications, ticketing and related functions on a world wide basis to airlines and travel agencies. Assessee entered into agreement with various airlines and provided connectivity between individual airlines and CRS created by assessee through its Indian AE.AO held that computers provided to subscribers through which sales were constituted amounted to fixed place PE of assessee in India and since Indian AE was functionally dependent upon assessee it also constituted agency PE in India. Held that computer, electronic hardware/software and connectivity provided by assessee to travel agents through third party nodes located in India would constitute PE of assessee in India, accordingly the income arising to assessee from airlines and travel agents was attributable to activities of PE in India and taxable in India. Considering nature and extent of activities in India and abroad and assets employed and risk assumed, profit attributable to bookings from India Income attributable to assessee's PE in India was to be determined at 15 per cent instead of 75 per cent as determined by AO. Held that software was not available outside Indian airport or to any of agents of assesseesince agents were booking tickets only through CRS and ARS was installed at airport which could be accessed only by airlines, payments made in relation to ARS could not be characterised as royalty either under section 9 or under India-Spain DTAA. (AY. 2017-18, 2018-19, 2019-20)

Amadeus IT Group SA. v. ACIT (2022) 197 ITD 330 (Delhi) (Trib.)

S. 9(1)(i): Income deemed to accrue or arise in India-Business connection-Sports management company provided drivers to team participating in Formula One Motor racing Championship-Failure to provide details regarding actual duration of said drivers' stay in India-Matter remanded to the file of AO for verification-DTAA-India-Switzerland [Art. 7]

Assessee, a Switzerland based sports management company, provided drivers to team participating in Formula One motor racing Championship in India and was earning significant sum from sponsors by way of granting them rights to use their marks and

symbols, etc.. AO held that the assessee had its Permanent Establishment (PE) in India as it undertook regular, continuous and repetitive business activity at its fixed place of business and, thus, considerations received/receivable by assessee in India is taxable in India. DRP held that since said event was held for three days in a year, there was no element of permanence in presence of assessee in India and use of facilities for 3 days in a year did not amount to having a fixed place of business in India and, therefore, there did no exist any PE of assessee in India. Tribunal has raised a query as to actual duration of said drivers' stay in India in connection with aforesaid race, time taken for preparation, finalization and conclusion and certificate of said drivers' arrival in India and departure in relation to event but assessee was not in a position to provide any such detail and submitted that these aspects were factual aspects and were not readily available. Matter remitted to the file of AO for verification. (AY. 2012-13, 2013-14)

GSA Gestions Sportives Automobiles SA. v. DCIT (2022) 196 ITD 118/ 96 ITR 28 (Delhi) (Trib.)

S. 9(1)(i): Income deemed to accrue or arise in India-Business connection-Royalty-Aircraft engine on lease rent basis from Netherlands-No permanent Establishment in India-Not liable to deduct tax at source-DTAA-India-Netherlands [S. 9(1)(vi)),195, Art. 7, 12]

Assessee had taken an aircraft engine on lease rent basis from company tax resident of Netherlands.AO held that rental payment made by assessee was taxable as royalty and was liable to deduct TDS. Held that since admittedly tax resident of Netherlands did not have PE in India, said rental payment for aircraft engine paid to it was not chargeable to tax in India as per article 7 of DTAA between India-Netherlands. Not liable to deduct tax at source. (AY. 2017-18)

ITO (TSD) v. AIR India Ltd. (2022) 196 ITD 670 (Delhi) (Trib.)

S. 9(1)(i): Income deemed to accrue or arise in India-Business connection-Permanent establishment-Agency PE-Agent is paid arm's length remuneration-Tax neutral-Not taxable-DTAA-India-Singapore [Art. 5]

Held that when an agent is paid an arm's length remuneration for services rendered, the existence of a dependent agent permanent establishment is wholly tax neutral following orders for preceding years. (AY.2017-18)

UPS Asia Group Pte. Ltd. v. ACIT (IT) *(*2022) 195 ITD 225 (Mum) (Trib.)

S. 9(1)(i): Income deemed to accrue or arise in India-Business connection-Annual Maintenance Contract with an Indian Co-Not to constitute either a fixed place PE or agency PE business profit of assessee could not be taxed in India-DTAA-India-Singapore [Art.5, 8]

Assessee, a tax-resident of Singapore, was a manufacturer and seller of scientific equipments, spare parts and peripherals and sold them globally, including in India. It offered maintenance services and entered into Annual Maintenance Contract (AMC) with Indian customers and all AMC and warranty-related services were subcontracted to an Indian company (DHR India). The AO held that since the premises of DHR were used by the assessee as a warehouse to stock goods and as a sales outlet, it had to be considered as a fixed place PE and thus, income attributable to PE had to be taxed in India. On appeal, the Tribunal held that since the terms of the agreement as well as the conduct of the parties did not make out a case for revenue that premises of DHR India would constitute either a fixed place PE or agency PE business profit of assessee could not be taxed in India. (AY.2017-18)

AB SciexPte. Ltd. v. ACIT (IT) (2022) 195 ITD 384 (Delhi) (Trib.)

S. 9(1)(i): Income deemed to accrue or arise in India-Business connection-Capitalgains-Sharetransactions-Beneficial ownership-AO is directed to decide the issue by passing speaking order-DTAA-India-Mauritius. [Art. 13]

Held that the concept of beneficial ownership is a sine qua non to entitlement to treaty benefits andcannot, in absence of a specific provision to that effect, be inferred or assumed; AO was directed to decide by speaking order whether only 'beneficial owner' could avail the benefit of article 13 of DTAA. (AY. 2016-17)

Blackstone FP Capital Partners Mauritius V Ltd. v. CIT IT (2022) 195 ITD 462/ 217 TTJ 753 (Mum) (Trib.)

S. 9(1)(i): Income deemed to accrue or arise in India-Business connection-Dependent agent (DAPE)-Remuneration at arm's length-Tax neutral-Addition was deleted-DTAA-India-USA [Art. 5, 7]

Assessee, a US-based company, is engaged in the supply of software products. The AO held that the assessee had a Dependent Agency Permanent Establishment (DAPE) in India thus, revenue from the supply of software would be business income taxable in India. On appeal following the order of earlier year, it was held that the existence of dependent agency would be wholly tax neutral and impugned additions made by AO were to be deleted. (AY. 2017-18)

Micro Focus Software Inc. v. DCIT (IT) (2022) 195 ITD 523 (Mum) (Trib.)

S. 9(1)(i): Income deemed to accrue or arise in India-Business connection-Engineering services to its Indian subsidiary-Absence of PE-Receipt is not taxable-DTAA-India-Thailand [Art, 7, 12, 22]

Held that receipts from engineering services would fall under business income in accordance with article 7 of DTAA and in absence of the assessee's PE in India, said receipts could not be brought to tax in India. (AY. 2016-17)

DCIT v. Michelin ROH Co. Ltd. (2022) 195 ITD 541 (Delhi) (Trib.)

S. 9(1)(i): Income deemed to accrue or arise in India-Business connection-Shipping inland waterways transport and air transport-Freight income received on account of transportation of cargo on vessel under slot arrangement basis is eligible for benefit of exemption to assessee under article 8 of DTAA between India and Germany. DTAA-India-Germany [Art. 8]

Held that freight income received on account of transportation of cargo on vessel under slot arrangement is eligible for benefit of exemption under article 8.(AY. 2017-18)

Hapag-Lloyd AG. v. DCIT (IT) (2022) 194 ITD 20 (Mum) (Trib.)

S. 9(1)(i): Income deemed to accrue or arise in India-Business connection-Shipping, Inland waterways transport and Air Transport-Income received by non-resident for giving weather routing report in form of analysis of data in tabular form/graphical representation is not chargeable to tax.

Dismissing the appeal of the Revenue the Tribunal held that income received by non-resident for giving weather routing report in form of analysis of data in tabular form/graphical representation is not chargeable to tax.(AY. 2005-06)

ITO v.Terapanth Foods Ltd. (2022) 194 ITD 614 (Rajkot) (Trib.)

S. 9(1)(i) : Income deemed to accrue or arise in India-Business connection-Interest-Interest on income tax refund-Interest on income tax refund is not effectively connected

with PE either on basis of asset-test or activity-test and, hence, it is taxable as per provisions in Para No. 2 of article XI of Indo-US DTAA-DTAA-India-USA [S. 9(1)(v)) (90,Art 11]

Held that interest income need not be necessarily business income for establishing effective connection with PE because that would render provision contained in paragraph 4 of article XI of Indo-US DTAA redundant and, thus, there may be cases where interest may be taxable under Act under residuary head and yet be effectively connected with PE.Accordingly interest on income tax refund is not effectively connected with PE either on basis of asset-test or activity-test and hence, it is taxable as per provisions in Para No. 2 of article XI of Indo-US DTAA.(AY. 2012-13, 2013-14)

Transocean Offshore International Ventures Ltd. v. DCIT (IT) (2022) 194 ITD 129 (Delhi) (Trib.)

S. 9(1)(i): Income deemed to accrue or arise in India-Business connection-Dependent Agency Permanent Agency-Indian subsidiary to distribute subscription supported television programming service to Indian subscribers-Distribution income cannot be taxed in India-Indian subsidiary was remunerated at ALP by assessee, no further profit/income could be said to be attributable to assessee for purpose of taxation in India-transponder fee and uplinking charges to US based company for providing facilities of telecasting channels of assessee in India-Not royalty-DTAA-India-Mauritius-India-USA [S. 9(1)(vi), 195, Art. 5(4), 12]

Assessee, a Mauritius based company, which is engaged in telecasting sports channel called 'Ten Sports'. It appointed its Indian subsidiary, Taj India as its distributor to distribute subscription supported television programming service solely for exhibition to subscribers in India. Later, by addendum in distribution agreement assessee gave Taj India authority to conclude contracts in its name.AO held that assessee had a dependent agent PE in India within meaning of article 5.4(i) of DTAA on ground that Taj India had authority to conclude contracts in name of assessee. On appeal the Tribunal held that in order to invoke provisions of article 5(4)(i), two conditions are required to be satisfied which are that person in contracting state has concluded contract and habitually exercised authority to conclude contract. Since AO merely relied on clause replaced by addendum in distribution agreement and failed to establish that Taj India habitually exercised authority to conclude contracts on behalf of assessee, in such case Taj India could not be said to be dependent agent PE of assessee under article 5(4) of DTAA and distribution income of assessee could not be taxed in India.As regards advertising sales agent to sell commercial advertisement time to prospective advertisers in India, since Indian subsidiary was remunerated at ALP by assessee, no further profit/income could be said to be attributable to assessee for purpose of taxation in India.Transponder fee and uplinking charges to US based company for providing facilities of telecasting channels of assessee in India, since said payment was not made for right to use any industrial, commercial or scientific equipment, payment in question would not fall within ambit of royalty used in para 3 of article 12 of India-USA DTAA. (AY. 2012-13)

Taj TV Ltd. v. ACIT (2022) 194 ITD 547 (Mum) (Trib.)

S. 9(1)(i): Income deemed to accrue or arise in India-Business connection-Supervisory Permanent Establishment in India-Merely providing access to the premises of joint venture Company for the purpose of providing agreed services by the assessee would not amount to the place being at the disposal of the assessee-DTAA-India-Japan [Art, 5(1), 5(4)]

Held that merely providing access to the premises of joint venture Company for the purpose of providing agreed services by the assessee would not amount to the place being at the disposal of the assessee. Neither any supervisory PE exist in terms of the Agreement for Dispatch of Engineers**.** Since the assessee does not have a PE, the issue of attribution of profits to such PE does not arise for consideration. (AY. 2014-15, 2015-16)
FCC Co. Ltd. v ACIT (IT)(2022) 64 CCH 0209 /216 TTJ 769 / 213 DTR 171 (Delhi)(Trib.)

S. 9(1)(i): Income deemed to accrue or arise in India-Business connection-Shipping business-Indian company an agent of independent status-Cannot be assessed as Agency PE of the assessee-DTAA-India-Mauritius [Art, 5(5)]
Held that since Indian company was an agent of independent status, it could not be considered as constituting agency PE of assessee. Order of CIT(A) is affirmed. (AY. 2013-14
DCIT v. Arc Line. (2022) 193 ITD 263 (Mum) (Trib.)

S. 9(1)(i): Income deemed to accrue or arise in India-Business connection-Support service-Outsourcing of work to India would not give rise to a fixed place PE-DTAA-India-Mauritius [Art. 5]
Held that Indian entity was remunerated at arm's length price by assessee, which was also accepted by TPO of both entities, assessee had no business connection in India in terms of section 9(1) and had no PE and, thus, no further attribution of profits was to be made. (AY. 2012-13)
ESPN Star Sports Mauritius SNC et Compagnie. v. DCIT *(*2022) 193 ITD 275 (Delhi) (Trib.)

S. 9(1)(i): Income deemed to accrue or arise in India-Business connection-Shipping agency agreement-Not exclusively working for assesee-Do not constitute Permanent Establishment-DTAA-India-Mauritius [S. 5(2), Art, 5(5), 7]

Assesseeis a shipping company incorporated in Mauritius.Assessee entered into shipping agency agreement with two entities in India.AO, after referring to various clauses of agency agreement held that both these entities were exclusively working on behalf of assessee and were not providing services to assessee in regular course of their business and both entities could not be considered to be agents having independent status and, thus, exceptions provided under article 5(5) were not applicable to them and held that assessee had a PE in India and, thus, shipping income earned by assessee was taxable in India.CIT (A) affirmed the order of the AO. On appeal, the Tribunal held both companies were providing services to various companies relating to shipping activities and they were not exclusively working for assessee and not only were they agents of independent status, but services provided by them to various shipping companies including assessee were in course of their ordinary course of business as per article 5(5). Since both companies did not constitute agency PE of assessee in India, business profits of assessee would not be taxable in view of article 7.(AY. 1998-99 to 2001-02)
Integrated Container Feeder Service. v. ACIT (2022) 192 ITD 286 (Mum) (Trib.)

S. 9(1)(i): Income deemed to accrue or arise in India-Business connection-Independent agents-No authority to conclude contracts of assessee-Profits attributable to Indian activities are not liable to tax in India-DTAA-India-USA [Art, 5, 7]

Assessee, a non-resident company, is engaged in business of rendering money transfer services across international borders. For purpose of carrying out its business in India, assessee had entered into agreements appointing agents in India. AO held that the assessee-company had a Permanent Establishment (PE) in India under article 5 in form of fixed placed PE due to usage of software developed and owned by assessee in India and that there was existence of agency PE on account of agents working in India and, accordingly, he held that commission income earned by assessee from its operations in India was taxable in India. CIT (A) allowed the appeal of the assessee. Tribunal held that agents engaged by assessee were independent agents under article 5(4) and they did not have necessary authority to conclude contracts of assessee and, on that premise, it was held that there was no agency PE of assessee in India. Tribunal also held that though assessee had business connection, it did not have any fixed placed PE nor agency placed PE in India, and, in absence of any such PE in India, profits, if any, attributable to Indian operations could not be assessed as business profits under article 7.(AY. 2013-14

DCIT v. Western Union Financial Services INC. (2022) 192 ITD 486 (Delhi) (Trib.)

S. 9(1)(i): Income deemed to accrue or arise in India-Business connection-Salary paid by Associated Enterprise-TDS was deducted-Employees have filed their salary return-No addition can be made-Purchase agreement-Sale and purchase as attributable to agency PE was not sustainable-DTAA-India-USA [Art, 5]

Two employees were seconded to AE as full-time working employees and, for administrative convenience, part of salary was paid by assessee in USA but same was reimbursed to it on cost-to-cost basis by AE and as such, they were not employees of assessee and did not render any services to assessee with respect to supervisory PE in India. AO added their salary including amount reimbursed by AE to income of supervisory PE of assessee. On appeal the Tribunal held that salary of these employees was paid by AE on which it deducted eligible taxes and issued TDS certificate in Form 16 and said employees also filed their return of income in India and copy of same was furnished before AO and employment agreement between them revealed that they were working exclusively for AE. AO was directed to delete addition made by him.Assessee, a US company, had sold certain goods to its AE in pursuance of purchase agreement which was signed by two employees of AE (Tim and Matt) on behalf of AE being managing directors AO held that said 2 employees were working for assessee and, accordingly, he was of view that there existed a dependent agency PE with respect to such transaction as per article 5 of DTAA. On appeal the Tribunal held that Tim and Matt were not employees of assessee but were employees of AE of assessee and therefore, purchase agreement was entered on behalf of AE in capacity of authorized signatory being directors. Accordingly, it could be concluded that there was no connection of said employees and assessee which could establish agency PE in India. Whole basis for treating transaction of impugned sale and purchase as attributable to agency PE was not sustainable.(AY. 2015-16)

Lubrizol Advanced Materials Inc. v. ACIT (2022) 192 ITD 596 (Ahd) (Trib.)

S. 9(1)(v) : Income deemed to accrue or arise in India-Interest-Transactions with Head Office-Paid by Indian branch of foreign bank to Head Office-Constitute a single entity-Neither deductible nor chargeable to tax-DTAA-India-Singapore [Art. 7]

Held that interest paid by Indian branch of foreign bank to Head Office is neither deductible in hands of Indian branch nor chargeable to tax in hand of Head Office and overseas branches as they constitute a single entity. (AY. 2015-16)

ACIT (IT) v. Credit Suisse AG. (2022) 197 ITD 209 (Mum) (Trib.)

S. 9(1)(v) : Income deemed to accrue or arise in India-Interest- Permanent establishment-Interest will not be taxed at a higher rate - Loan provided to Indian parties-Not attributable to the permanent establishment-Interest income taxable at 10 per cent and not 40 per cent- DTAA-India-Japan . [S. 9(1)(i), 154, Art. 7, 11(6), 14]

Assessee company which was incorporated in Japan and received interest income on loans provided to Indian parties in form of supplier's credit. Assessee claimed that interest income would be taxed at the rate of 10 per cent as per article 11(2) of DTAA. The AO denied said claim on ground that the assessee had a PE in India which would trigger an exclusion clause under article 11(6) and the assessee would not be eligible for a concessional rate of taxation and taxed interest income at 40 per cent as per DTAA. Held that triggering of exclusion under article 11(6) would not, by itself, result in taxation of interest income at the normal rate of tax, unless interest income was taxable under article 7(1) or Article 14(1). Since interest income was not directly or indirectly attributable to its PE in India, the mere existence of the assessee's PE in India could not be reason enough to invoke taxability of interest income under Article 7 and the exclusion clause under Article 11(6) could not be triggered. Accordingly, the interest income is to be taxed at the rate of 10 per cent as per Article 11(2) of DTAA. Considered the words and phrases: Words 'effectively connected with such permanent establishment' as occurring in article 11(6) of the DTAA between India and Japan. (AY. 2016-17)

DCIT v. Marubeni Corporation. (2022) 195 ITD 620/ 97 ITR 1(SN)/ 218 TTJ 537/ 215 DTR 265 (Mum) (Trib.)

S. 9(1)(v) : Income deemed to accrue or arise in India-Interest-Rate of tax-Government securities-Interest income received on rupee-denominated bonds-Rate applicable at the rate of 5 per cent or 15 per cent-Matter remanded-Offshore distribution commission income-No permanent establishment-Commission is not taxable in India. [S. 9(1)(i), 115AD, Art,7, 11]

Assessee, a Singapore-based company, was a registered FII with SEBI and offered interest income received on rupee-denominated bonds/government securities to tax at the rate of 5 per cent under section 115AD. AO computed tax at the rate of 15 per cent under article 11 of DTAA without examining the nature of investments on which interest income was received, the matter was remanded for reconsideration. Held that offshore distribution commission income was in nature of business income and in absence of permanent establishment, said the commission is not taxable in India (AY. 2014-15, 2015-16)

DCIT v. Credit Suisse (Singapore) Ltd. (2022) 195 ITD 652 / 96 ITR 77(SN)/ 219 TTJ 1078 (Mum) (Trib.)

S. 9(1)(vi) : Income deemed to accrue or arise in India-Royalty-
Payment of subscription for online journal-Matter remanded to High Court to consider facts-DTAA-India-USA [S. 195,
, 201(1), (1A), Art. 12]

High Court reversing the judgement of Tribunal in Wipro Ltd v. ITO (2005) 278 ITR 57(AT) (Bang.)(Trib.),held that payments to foreign publishing house for subscription to web-based foreign publishing house constitute royalty from which tax is deductible at source. On appeal the Supreme Court held that the parties having conceded that the facts, as found by the Appellate Tribunal and the authorities, had not been analysed by the High Court, the judgment of the High Court was to be set aside with an order of remand to the High Court to re-examine the issue and the question of law, and liberty to the parties to raise all pleas and contentions, in accordance with law. If any order was passed on the review petition in the

case of Engineering Analysis Centre of Excellence Private Ltd. v. CIT (2021) 432 ITR 471 (SC) it would be open to the parties to rely upon that order.(AY.1999-2000 to 2002-03)

Infosys Technologies Ltd v. CIT (2022)447 ITR 666 / 220 DTR 41 / 329 CTR 688/ 289 Taxman 296 (SC)
Wipro Ltd. v. CIT (2022)447 ITR 666 / 220 DTR 41 (SC)
Editorial : Decision in CIT v. Wipro Ltd (2013) 355 ITR 284 (Karn)(HC) set aside.

S. 9(1)(vi) : Income deemed to accrue or arise in India-Royalty-Use of computer software through/distribution agreements-Payment did not amount to royalty for use of copyright in computer software-Not taxable in India-DTAA-India-USA [Art, 12]
Payments were made by Indian-company to non-resident company which was computer software manufacturer/supplier for resale/use of computer software through distribution agreements, said payment did not amount to royalty for use of copyright in computer software, and same did not give rise to any income taxable in India. (AY.2005-06 and 2007-08)
CIT(IT) v. Gracemac Corporation (2022) 287 Taxman 197 /113 CCH 97 (Delhi)(HC)

S. 9(1)(vi) : Income deemed to accrue or arise in India-Royalty-Transferee authorised to use licensed software-No transfer of Copyright-Amount received is not royalty-DTAA-India-USA [S.90(2) Art, 12]
Dismissing the appeals of the Revenue the Court held that the Tribunal was right in holding that payments for licensing of software products of the assessee in the territory of India by it were not taxable in India as royalty under section 9(1)(vi) read with article 12 of the Double Taxation Avoidance Agreement.(AY.1997-98, 1999-2000)
CIT (IT) v. Microsoft Corporation (2022)445 ITR 6 / 288 Taxman 32 (Delhi)(HC)

S. 9(1)(vi) : Income deemed to accrue or arise in India-Royalty-Transferor authorising transferee to use licensed software-No Transfer of Copyright-Amount received not assessable as royalty. Copyright Act, 1957, S. 14(a), 14(b), 30, 52(1)(aa), Art, 226]

EYGBS was an Indian company engaged in providing back-office support and data processing services. It entered into an agreement with the EYGSL (UK) whereby it received "right to benefit from the deliverables and/or services" from the UK company. The Authority for Advance Rulings held that the amount received was assessable as royalty in India. On a writ petition against the ruling the Court held that that for the payment received by the UK company from EYGBS to be taxed as "royalty", it is essential to show a transfer of copyright in the software to do any of the acts mentioned in section 14 of the Copyright Act, 1957. A licence conferring no proprietary interest on the licensee, does not entail parting with the copyright. Where the core of a transaction is to authorise the end-user to have access to and make use of the licenced software over which the licensee has no exclusive rights, no copyright is parted with and therefore, the payment received cannot be termed as "royalty". EYGBS, in terms of the service agreement and the memorandum of understanding, merely received the right to use the software procured by the UK company from third-party vendors. The consideration paid for the use thereof therefore, could not be termed "royalty". The rights acquired by the UK company from the third-party software vendors were not relevant. What was relevant was the agreement between the UK company and EYGBS. As the agreement did not create any right to transfer the copyright in the software, the payment

would not fall within the ambit of the term "royalty". Referred Engg. Analysis Centre of Excellence P. Ltd. v. CIT [2021] 432 ITR 471 (SC).
EY Global Services Ltd. v. ACIT (2022)441 ITR 54/ 324 CTR 149/ 209 DTR 1/ 285 Taxman 100 (Delhi) (HC)

EYGBS (India) Pvt. Ltd. v. JCIT (2022)441 ITR 54/ 324 CTR 149/ 209 DTR 1/ 285 Taxman 100 / 324 CTR 149/ 209 DTR 1/ 285 Taxman 100 (Delhi) (HC)

S. 9(1)(vi) : Income deemed to accrue or arise in India – Non -resident - Royalty - Selling licensed software and related services — No transfer of Copyright or any right to use – Neither royalty nor fees for technical services –Education cess - Education cess is of same nature as surcharge — Computed strictly in terms of treaty provisions - DTAA -India – Singapore [S.9(1)(vii), Art , 12(3), 12(4)(b)]
Held that the assessee had sold copyrighted article and not the copyright. Accordingly, the amount received by the assessee from sale of software and provision of software related services could not be treated as royalty under article 12(3) of the Double Taxation Avoidance Agreement between India and Singapore. The Tribunal also held that the Assessing Officer had not brought any cogent material on record to demonstrate that while providing the software related maintenance service, the assessee had made available any technical knowledge, know-how, or skill so as to enable the recipient of such service to use it independently in exclusion of the assessee. As the conditions of article 12(4)(b) of the Agreement were not satisfied, the amount received could not be treated as "fees for technical services". The addition made was to be deleted. The Assessing Officer was directed to compute the tax liability strictly in terms of the provisions of the Agreement.(AY.2014-15)

Microstrategy Singapore Pte. Ltd. v. ACIT (IT) (2022) 99 ITR 343 (Delhi)(Trib)

S. 9(1)(vi) : Income deemed to accrue or arise in India – Royalty -Research work – Neither royalties / fees for technival services – Unless service provider makes available his technical knowledge, experience, skill, know-how or process to recipient of technical service-Not laible to deduct tax at source -DTAA -India -USA [S. 9(1)(vii), 195 , Art 12]
Assessee-company had entered into an agreement with University of Texas USA to carry out research programme and had made payment to avail technical services to said University. Assessing Officer held that the said payment was in nature of royalties/fees for technical services - Therefore, he directed assessee to deduct TDS at rate of 10 per cent (excluding education cess/surcharge) on said payment . Tribunal held that there was neither any patent/copyright used by assessee against which royalty was paid nor there was any technical know-how which was made available to assessee . The said payment was not covered under royalties/fees for technical services . There was no liability on assessee to deduct TDS in pursuance to article 12 of India-USA DTAA .
Oil & Natural Gas Corporation Ltd v. ITO (IT) (2022) 219 TTJ 505/ 218 DTR 147 / (2023) 146 taxmann.com 137 (Ahd)(Trib)

S. 9(1)(vi) : Income deemed to accrue or arise in India – Royalty -Fees for technical service- No material to substantiate that assessee transferred use or right to use copyright- Copyrighted articles- Additions not justified-DTAA -India – Singapore [Art.12(3), 12 (4)(b)]

The Tribunal held that in the assessee's own case, the Tribunal had held facts on record clearly demonstrated that what the assessee had sold was copyrighted article and not the copyright, that the amount received by the assessee from sale of software and provision of software related services could not be treated as royalty under article 12(3) of the DTAA, and that the conditions of article 12(4)(b) of the DTAA were not satisfied so as to treat the amount received as fees for technical services. Addition was deleted (AY. 2013-14, 2016-17, 2017-18)

Microstrategy Singapore Pte Ltd v. Dy.CIT (IT) (2022) 97 ITR 26 (SN) (Delhi)(Trib)

S. 9(1)(vi): Income deemed to accrue or arise in India – Royalty – Fees for technical services- Payment received from Indian from Indian hotels chargeable to tax in India.

The Tribunal held that the payments received from the Indian hotels pursuant to the agreement were income chargeable to tax in India as fees for technical services. (AY. 2011-12).

Global Hospitality Licensing Co. Sarl v .Dy. CIT (IT (2022)97 ITR 57 (SN) (Mum) (Trib)

S. 9(1)(vi) : Income deemed to accrue or arise in India – Royalty – Consideration received for sale of software products – Not assessable as royalty – No permanent establishment in India- Net loss – Academic issue - DTAA-India – Finland [S. 9(1)(vi), Expln.4. Art. 7(1)]

Held that the consideration received for sale of software products is not assessable as royalty .The Tribunal held that since the assessee had a global net loss according to audited books of accounts, the assessee was not liable to be taxed in India according to article 7(1) of the Double Taxation Avoidance Agreement between India and Finland. . (AY.2008-09, 2009-10, 2010-11, 2013-14, 2014-15, 2015-16)

Nokia Solutions And Networks OY v .Add. CIT (IT) (2022)97 ITR 79 (Delhi) (Trib)

S. 9(1)(vi) : Income deemed to accrue or arise in India – Royalty - Software user fee — Selling standard software and not providing any licence to reproduce or make copies - Customers having only use of Copyrighted Article and no rights therein — Payments are not royalty – Not liable to deduct tax at source . [S. 9(1)(i), 195]

Commissioner (Appeals) accepted the contention of the assessee that software was a copyrighted article, he still held that the payments received by the assessee for use of its software products were in the nature of royalty on the grounds that payment for use of software was for use or right to use secret formula or process, and that payment for use of software was for industrial or commercial knowledge of the assessee. The Tribunal held that the receipts were not royalty, and the Assessing Officer was directed to delete the addition. (AY. 2016-17)

GSX SARL v. ACIT (IT) (2022)96 ITR 69 (SN)(Delhi)(Trib)

S. 9(1)(vi) : Income deemed to accrue or arise in India – Royalty – Fees for Technical services - Right to use domin name which is in the nature of trade mark –Assessable as royalty – Web hosting services being ancillary to domain name registration services, consideration received had to be treated as FTS- DTAA -India -USA [S. 9(1)(vii), 115A , Art , 12(4)(a)]

Assessee, a US-company, was one of accredited domain name registrar of world's largest Internet Corporation for Assigned Names and Numbers (ICANN). It received certain amount

towards domain name registration services, which was not offered to tax Assessing Officer held that assessee acted as channel between customers and ICANN for domain name registration and assessee also enabled customers to get their names registered with ICANN for which it charged fee from them and concluded that amount received was in nature of royalty as per section 9(1)(vi) read with section 115A . Tribbunal held that since assessee had transferred right to use domain name, which was in nature of trademark, then consideration received by assessee for transferring such right would qualify as royalty under Explanation 2 to section 9(1)(vi) of the Act . Tribunal also held that consideration received from web hosting services being ancillary to domain name registration services, had to be treated as FTS. (AY. 2015-16)

Godaddy.com LLC v. DCIT (IT)(2022) 220 DTR 89 / 220 TTJ 785 / (2023)) 146 taxmann.com 316 (Delhi)(Trib)

S. 9(1)(vi) : Income deemed to accrue or arise in India – Advertisement services - Royalty - advertisement space on website owned by foreign company (ESPN)- right to use of equipment (Server) - ESPN India was merely a reseller of advertisement space, consideration paid by ESPN India for purchase of advertisement space to ESPN, UK was not taxable as royalty- DTAA -India -UK [S. 9(1)(vii), Art , 13]

Assessee-company, ESPN India entered into an agreement (Re-seller agreement) with foreign company (ESPN, UK) for resale of advertisement space on websites owned by it . Assessing Officer held that ESPN India collected advertisement material from Indian advertisers and upload same in web server thereby positively utilizing web server and, thus, consideration paid by assessee was for provision of comprehensive services rendered and fell under article 13 for use of equipment and use of process, provided by ESPN, UK . Tribunal held that since consideration paid by ESPN India was not for 'use' of equipment (server) or for any process nor imparting of any information concerning technical, industrial, commercial, or scientific knowledge, experience or skill and further, no right had been conferred on ESPN India over server or website belonging to ESPN UK and ESPN India was merely a reseller of advertisement space it purchased on ESPN UK's website, consideration paid by ESPN India for purchase of advertisement space was not taxable as royalty. (AY. 2010-11 to 2013-14)

ESPN Digital Media (India) (P) Ltd. v Dy. CIT (IT) (2022) 218 TTJ 785 / 140 taxmann.com 442 (Chennai)(Trib)

S. 9(1)(vi) : Income deemed to accrue or arise in India-Royalty-Sale of computer software-Not taxable as royalty-DTAA-India-Singapore [S. 9(1)(vii), Art. 12(3)]

Held that amount of consideration received by Singapore based company, on account of sale of computer software to end users customers in India was not taxable as royalty for use of copyright in computer software. (AY. 2015-16)

ACIT v. Symantec Asia Pacific Pte. Ltd. (2022) 197 ITD 25 /(2023) 102 ITR 387 (Delhi) (Trib.)

S. 9(1)(vi) : Income deemed to accrue or arise in India-Royalty-Fees for technical services-Sale of off-shelf software-Not royalty-DTAA-India-Israel [S. 9(1)(vii), Art. 12(3)]

Held that sale of off-shelf software by assessee-company to its AE was merely a sale of copyrighted article and had not resulted in transfer of any right in relation to a 'copyright' embedded in software, amount received by assessee from its AE on account of sale of software/license charges was not royalty under article 12(3) and as per section 9(1)(vi). (AY. 2010-11)

Verint System Ltd. v. DCIT (2022) 197 ITD 50 (Delhi) (Trib.)

S. 9(1)(vi) : Income deemed to accrue or arise in India-Royalty-Fees for technical services-Marketing services-fees for included services-Agreement with hotels and received centralized service fees for providing advertisement, publicity and sales promotion-Use of trademark, trade name or other enumerated service referred to in agreement were incidental to said main service, centralized service fees received by assessee would not be in nature of royalty or FTS-DTAA-India-USA [S. 9(1)(vii), 90, Art, 7, 12]

Assessee, a US based company which is engaged in business of providing various hotel related services to hotels across world.Assessee entered into an agreement with chains of hotels in India and received centralized services fees.AO held that assessee was making available technical and consultation services and use of its trademark, technical know-how and, thus, fees received for services would be taxable as fees for included services. Held that in assessee's own case for assessment years 1995-96 to 2000-01, jurisdictional High Court upheld decision of Tribunal wherein it was held that main service rendered by assessee was advertisement, publicity and sales promotion and, keeping in mind their mutual interest, use of trademark, trade name or other enumerated service referred to in agreement with assessee were incidental to said main service and, therefore, payments received were not in nature of royalty or FTS. Following the earlier years orders the Tribunal held that fee received for centralized services would not be taxable in India. (AY. 2013-14, 2014-15)
Sheraton International, LLC. v JCIT(IT) (2022) 197 ITD 351 (Delhi) (Trib.)

S. 9(1)(vi):Income deemed to accrue or arise in India-Royalty-Fees for technical services-Sale of advertisement space on a website-No PE of foreign enterprises-Income neither royalty nor FTS-Online advertisement is now covered under Equalization Levy-DTAA-India-Ireland [S. 9(1)(vii), Art. 12,Copyright Act, 1957, 14(a), 14(b), 30]
AO held that sums payable under distribution agreement to GIL was for right to sell adwords program, use of or right to use various IP rights (process, trademarks, brand features, copyright, know-how) in adwords program and use of or right to use industrial, commercial or scientific equipment.Accordingly theAO held that the amount received is covered by definition of Royalty under Act and DTAA Held that all intellectual property would remain exclusive property of Google Ireland and confidential information provided by Google Ireland was to be employed by assessee in performance of its services. Trademark and other brand features were not used independently or de hors distribution agreement but they were incidental or ancillary for purpose of carrying out marketing and distribution of AdWord program and, thus, none of rights as per section 14(a)/(b) and section 30 of Copyright Act, 1957 had been transferred by Google Ireland to assessee.On facts payment could not be characterized as royalty. (AY. 2009-10, 2012-13)
Google India (P.) Ltd. v. DCIT (IT) (2022) 197 ITD 604 (Bang) (Trib.)

S. 9(1)(vi) : Income deemed to accrue or arise in India-Royalty-Educational institute-Sale consideration received for providing access of its course content to an Indian company is not royalty-Matter remanded-DTAA-India-Malaysia [S. 9(1)(vii), Art, 12]
Assessee, an educational institution incorporated in Malaysia, was engaged in providing online education courses to individuals and corporates. It provided software to access its course content to an Indian-company and its employees.It received consideration towards sale of software licenses and software implementation support fees and annual maintenance fee.AOheld that said consideration received by assessee constituted royalty within meaning of article 12(3) of India-Malaysia DTAA. Following the earlier year order for the assessment

year 2014-15, matter remanded to the AO.Referred Engineering Analysis Centre of Excellence (P.) Ltd. v. CIT (2021) 281 Taxman 19/432 ITR 471 (SC). (AY. 2016-17)
EduNxt Global SDN BHD. v. ACIT IT, (2022) 197 ITD 741 (Bang) (Trib.)

S. 9(1)(vi) : Income deemed to accrue or arise in India-Royalty-Sale of software products to its Indian clients-Cloud based services-Subscription fees-Not be taxable as royalty-DTAA-India-USA [S. 9(1)(vii) Art, 12]
Assessee, a US based company, earned revenue from sale of software products to its Indian clients.AO held that said revenue would be royalty under article 12 of DTAA and would be taxable in India. Following own case for earlier years it is held that revenue earned from sale of software would not be taxable in hands of assessee as royalty. Tribunal also held that held that subscription fee would not be taxable as royalty. (AY. 2017-18)
Microsoft Regional Sales Pte. Ltd. v. ACIT (2022) 197 ITD 778 (Delhi) (Trib.)

S. 9(1)(vi) : Income deemed to accrue or arise in India-Royalty-Computer software-Sale of software to its Indian clients,-Software did not include providing copyright of said software to clients-Subscription fees-Cloud computing infrastructure-Not taxable as royalty-DTAA-India-USA [S. 9(1)(vii), Art. 7, 12]
Assessee, a US based company, earned revenue from sale of software to its Indian clients.AO held that said revenue would be royalty under article 12 of DTAA and would be taxable in India. Held that grant of right to install and use software did not include providing copyright of said software to customer and, thus, revenue earned from sale of software would not be taxable as royalty. Tribunal also held that cloud computing infrastructure to its Indian clients through subscription agreement and even though cloud based services were based on patents/copyright but subscribers did not get any right of reproduction, thus, subscription fee was merely a consideration for online access of cloud computing services and would not be taxable as royalty in India. (AY. 2013-14, 2014-15) .(2012-13)

MOL Corporation. v. ACIT (IT) (2022) 196 ITD 100 (Delhi) (Trib.)

MOL Corporation. v.CIT (IT) (2022) 195 ITD 1 (Delhi) (Trib)

S. 9(1)(vi) : Income deemed to accrue or arise in India-Royalty-Use of data base-Not royalty-DTAA-India-UK [Art, 13]

Assessee-company, a tax resident of UK, was engaged in providing global business news and information services to organizations worldwide. It entered into an agreement with its group company, DJCIPL, for distribution of its financial products in Indian market and, thereby, received consideration.AO treated same as 'royalty' under provisions of Act as well as India-UK DTAA as payment was for use of copyright in literary work; use of information concerning commercial, scientific knowledge, experience and skill; and use or right to use equipment or process. Held that payment received by assessee merely for use of database and not for use or right to use any equipment, was not 'royalty' under article 13 of India-UK DTAA. (AY. 2015-16)
Factiva Ltd. v. DCIT (IT) (2022) 196 ITD 240 /(2023) 102 ITR 571 (Mum) (Trib.)

S. 9(1)(vi) : Income deemed to accrue or arise in India-Computer software-Royalty-Fees for technical services-Attributable profits-Matter remanded to the file of AO for de novo adjudication-DTAA-India-Portugal [S. 9(1) (vii), 147, 148, Art, 12]

Assessee (Alcatel Portugal) was one of Alcatel Group entities which had supplied telecom equipments to customers in India. During assessment years under consideration, assessee did not have any office, premises or other place of business in India except a project office (PO) in India and PO of assessee earned interest income which was offered to tax and assessment was completed. Thereafter, assessments were reopened by issue of notice under section 148 on ground that assessee had dependent agent PE in India and as attribution of profit at 2.5 per cent in case of Alcatel France (one of group entities) for assessment year 2006-07 was only on account of activities performed by project office, and, thus, attribution in case of assessee needed to be increased. On appeal the Tribunal held that the AO had not given any independent finding based on facts of assessee's case as to why there should be any profits attributable to PO of assessee and AO merely relied on findings of fact in case of Alcatel France and attributed profits to PO of assessee.Accordingly entire issue was restored to AO for de novo adjudication. (AY. 2002-03, 2003-04)
Alcatel Lucent Portugal, SA. v. DCIT (IT) (2022) 196 ITD 270 (Delhi) (Trib.)

S. 9(1)(vi) : Income deemed to accrue or arise in India-Royalty Principle of the most favoured nation (MFN)-Matter was remanded-DTAA-India-Belgium [Art. 12]
The Assessee a tax resident of Belgium, provided interconnect services to an Indian telecom service provider. The AO treated the receipt from said service as royalty. Assessee contended that payments received for said service rendered could not be brought to tax in view of the principle of the most favoured nation (MFN) clause in the tax treaty. Matter was remanded. (AY.)
Belgacom International Carrier Services SA v.DCIT (2022) 195 ITD 314 (Bang) (Trib.)

S. 9(1)(vi) : Income deemed to accrue or arise in India-Royalty Fees for technical services-Payment to non-resident-Consideration for resale/use of computer software through EULAs/distribution agreements, is not payment of royalty for use of copyright in computer software, and does not give rise to any income taxable in India-DTAA-India-Netherland-Portugal [S. 9(1(vii), 195 Art, 12]

The assessee, Netherland based company, engaged in the business of rendering services in the confectionery industry, entered into an agreement with the Indian customer (PVM India) for providing SAP functional services, SAP technical services, ICT Services and Microsoft Licencing Fees, etc. and had earned income. The AO held that the payment fell under the term Royalty within the meaning of clause (iii)) of Explanation to section 9(1) and article 13 between India-Netherland treaty and taxed receipt at a rate of 10 per cent. DRP confirmed the addition. On appeal, the Tribunal held that consideration for resale/use of computer software through EULAs/distribution agreements is not payment of royalty for use of copyright in computer software, and does not give rise to any income taxable in India. (AY. 2017-18)
Perfetti Van Melle ICT &BV v. ACIT (IT) (2022) 195 ITD 63 (Delhi) (Trib.)

S. 9(1)(vi) : Income deemed to accrue or arise in India-Computer software-Royalty-Agreements with distributors in India for supplying software products and for providing ancillary support services-Not royalty-DTAA-India-USA [Art, 12]
Assessee-company incorporated in the United States of America (USA) was engaged in the business of developing, manufacturing and distributing of software products. It had entered into international distributor/reseller agreements with distributors in India for supplying software products and for providing ancillary support services against a certain amount. The AO held that revenue received by the assessee was to be treated as royalty to be taxed at a

rate of 15 per cent as per Article 12. Held that distributors were granted a non-exclusive and non-transferable license to resell software and furthermore, end users were granted a limited right to use software without any right to sub-license, transfer, modify or reproduce the software. Accordingly, the payments made by distributors and end users did not qualify as royalties under DTAA.(AY. 2016-17) (AY. 2014-15)
Attachmate Corporation. v. DCIT (2022) 195 ITD 763 (Delhi) (Trib.)

S. 9(1)(vi) : Income deemed to accrue or arise in India-Royalty-Business of marketing advertisement time of different television channels-Secret formula or process-Payment made for utilization of transponder centered on a satellite would not constitute royalty –Not liable to deduct tax at source-DTAA-India-USA-UK-Malaysia [S. 195(2), Art, 12, 13]

Assessee was engaged in business of marketing advertisement time of different television channels and paid transponder service fees to three companies based in USA, UK and Malaysia.AO held that payments made for transponder service fee constituted royalty as same was a 'process' defined in Explanation 6 of section 9(1)(vi) and would be taxable in India. On appeal the Tribunal held that term used in DTAA was 'secret formula or process', term 'process' as defined in Explanation 6 to section 9(1)(vi) could not be incorporated into DTAA as same would make meaning of secret redundant, thus payment made to foreign companies for utilization of transponder centered on a satellite would not be in nature of royalty in terms of relevant three DTAAs.(AY. 2017-18 to 2020-21)
ACIT (IT) v. Viacom 18 Media (P.) Ltd. (2022) 194 ITD 263 (Mum) (Trib.)

S. 9(1)(vi) : Income deemed to accrue or arise in India-Royalty-Supply of software embedded in hardware equipment-Not royalty-Addition was deleted-DTAA-India-France [Art. 13]
Assessee, a foreign company manufacturer and supplier of telecommunication equipment. As regards supply of software embedded in telecommunication equipment to Indian customers, assesseecontended that since software was inextricably linked to equipment supplied, payment received against said supply could not be treated as royalty. AO held that payment for software embeddedin telecommunication equipments supplied to Indian customers was taxable as royalty on gross basis both under provisions of Act as well as tax treaty and, accordingly, he brought to tax royalty on embedded software. Tribunal held that income from supply of software embedded in hardware equipment or otherwise to customers in India did not amount to royalty under section 9(1)(vi) and under article 13, addition made by AO was to be deleted. (AY. 2015-16, 2016-17)
DCIT v. Alcatel Lucent International. (2022) 194 ITD 368 (Delhi) (Trib.)

S. 9(1)(vi) : Income deemed to accrue or arise in India-Royalty-Information technology support services to its group entities-Matter remanded-DTAA-India-USA [S. 9(1)(vii)), Art, 12]
Tribunal held that identical issue had come up before Tribunal in assessee's own case in assessment years 2009-10 to 2013-14 and it remanded issue to AO for fresh consideration.Accordingly the order was remanded to AO for consideration afresh. (AY. 2017-18)
Kennametal Inc. v. ACIT (2022) 194 ITD 617 (Bang) (Trib.)

S. 9(1)(vi) : Income deemed to accrue or arise in India-Royalty-Granting access to its data base and user of data base-Not to be considered as royalty-Not liable to deduct tax at source-DTAA-India-USA [Art, 12]

Assessee, a US company, was allowing access to data/information on payment of a fee.AO held that the assessee had granted license to access online data base which fell within definition of Royalty and taxed same under article 12. On appeal the Tribunal held that since assessee was granting access to its data base and user of data base did not receive right to exploit copyright in database, and he only enjoyed product in normal course of his business, transaction under consideration was for provision of accessing data base of assessee, and payment of fee for same could not be considered as royalty under article 12 of India USA-DTAA. (AY. 2013-14, 2014-15)

OVID Technologies Inc. v. DCIT IT (2022) 194 ITD 768 (Delhi) (Trib.)

S. 9(1)(vi) : Income deemed to accrue or arise in India-Royalty-Double taxation relief-Fees for Technical Services-Engineering Services-Separate Contracts-No Make available cannot be invoked-Not taxable-Reimbursement-Not taxable-DTAA-India-USA [S. 90, Art.12]

The assessee is a non-resident who had entered into a sub-contract agreement with its associated enterprises, an Indian company, to provide engineering services for developing a vehicle safety system in India. For every new project/requirement in India, AE has to invariably sub-contract the relevant portion of the project to the assessee. The AO held that the money received is taxable as fees for technical services under section 9 of the Act and Article 12 of the India-US Tax treaty. The Tribunal noted that the Memorandum of Understanding to India-USA DTAA explains the term 'make available' to mean that the service recipient is enabled to apply the technology. The technology will be considered to be made available when the person acquiring such technical knowledge can use the technology in future without the service provider's involvement on his own. If the services are consumed in the provision without leaving anything tangible with the payer for use in future, then it will not be characterized as 'making available' of the technical services. Where an assessee rendered engineering services to its AE without making available any technology, skill, or knowledge involved in carrying out such engineering services to enable its AE to use those services independently in future, the payment received for such engineering services could not be termed as 'fee for technical services'. In addition, for every new project, the AE must enter into a contract with the assessee. There is no occasion to transfer or make available any technology, skill, knowledge, process, etc. The Reimbursement towards software charges will not qualify as royalty under section 9(1)(vi) or Article 12 of the DTAA. (AY. 2015-16)

Autoliv ASP Inc. v. Dy.CIT (IT) (2022) 216 TTJ 607/95 ITR 270/194 ITD 253/ 214 DTR 25 (Delhi) (Trib.)

S. 9(1)(vi) : Income deemed to accrue or arise in India-Royalty-Payment made for use of software-Does not give rise to royalty-not table in hands of assessee-DTAA-India-USA [Art, 12]

Held that what had been transferred was not copyright or the right to use copyright but a limited right to use the copyrighted material and did not give rise to any royalty income and the revenue received from the BREW operator agreement and the test tools agreement was not chargeable to tax in the hands of the assessee.(AY.2015-16, 2016-17)

Qualcom Technologies Inc. v Dy. CIT (2022)93 ITR 13/ 194 ITD 329 (Delhi) (Trib)

S. 9(1)(vi) : Income deemed to accrue or arise in India-Royalty Business of transmitting telecommunication signals to/from its customers-Income earned was not in nature of royalties –Not liable to tax in India-DTAA-India-USA [Art. 12(3)]

Held that income earned from thebusiness of transmitting telecommunication signals to/from its customers, was not in nature of royalties fallingwithin ambit of Explanation 2 to section 9(1)(vi) and article 12(3) of India-USA and it was not liable to tax in India. (AY. 2015-16)

Intelsat Corporation. v. ACIT (2022) 193 ITD 259 (Delhi) (Trib.)

S. 9(1)(vi) : Income deemed to accrue or arise in India-Royalty-Consideration for resale /use of computer software-Payment is not payment of royalty-Not taxable in India-Not liable to deduct tax at source-DTAA-India-USA [S. 195, 201(1),201(IA Art, 12)

Dismissing the appeal of the asseasee the Tribunal held that theamount paid by assessee Indian end-users/distributors to non-resident computer software manufacturer/suppliers as consideration for resale/use of computer software through EULAs/distribution agreement was not payment of royalty for use of copyright in computer software and, thus, said payment did not give rise to any income taxable in India. The assessee is not required to deduct tax u/s 195 of the Act hence not held to be assessee in default under section 201(1) & 201(IA) of the Act. (AY. 2011-12, 2012-13)

DCIT v. Petrofac Engineering Services (P.) Ltd. (2022) 193 ITD 532 (Chennai) (Trib.)

S. 9(1)(vi) : Income deemed to accrue or arise in India-Royalty-Right to use of copy right in a program-Information products and services-Not royalty-DTAA-India-USA [Art. 12]

Assesseeis engaged in business of providing information products and services containing global business and financial news to organisations worldwide. It had appointed its AE on a principal to principal basis for distributing its products in Indian market and accordingly, received purchase price at arm's length price.AO treated said Indian receipts as royalty under provisions of act as well as India-USA DTAA. On appeal the Tribunal held that payments made for acquiring right to use product itself, without allowing any right to use copyright in product were not covered within scope of royalty.As the assessee had only granted access to its database and received payments for right to use of copyright in a program' and not right to use program itself, theaddition was deleted. (AY. 2015-16)

Dow Jones & Company Inc. v. ACIT (2022) 193 ITD 564 (Delhi) (Trib.)

S. 9(1)(vi) : Income deemed to accrue or arise in India-Royalty-Merely provided alloys, lease rentals received for such leasing out of alloys could not be treated as royalty-DTAA-India-USA [Art, 12]

Assessee-company, formed and incorporated in USA, was engaged in manufacturing glass fiber in India. During year, assessee had leased out alloys including rhodium and platinum owned by it to two companies in India, namely, OCIPL and OCIIPL and received lease rentals in respect of same-OCIPL and OCIIPL further sent same to OCSPL, a Singapore based company, for re-fabrication of bushings.AO held that receipts of assessee on account of lease rentals was taxable as royalty as per section 9(1)(vi) and article 12(3) of DTAA as it was earned out of leasing out license to use intellectual rights of economic beneficial rights of drawing and design of bushings. On appeal the Tribunal held that the assessee merely

provided alloys, therefore, consideration for alloys could not be treated as royalty under section 9(1)(vi) as well as article 12 of DTAA between India and USA. (AY. 2013-14, 2014-15)
Owens-Corning Inc. v. DCIT (IT) (2022) 193 ITD 824 (Mum) (Trib.)

S. 9(1)(vi) : Income deemed to accrue or arise in India-Royalty-Granting a non-exclusive,non transferable software licence to Indian customer for a specific time period-Payment received would not be liable to tax in India as royalty-DTAA-India-USA [S. 9(1)(v), Art. 12(3), Copyright Act, 1957, S. 14]

The assesseegranted a non-exclusive,non transferable software licence to Indian customer for a specific time period. The AO held that receipt is liable to tax as royalty as per the provisions of section 9(1)(vi) of the Act. CIT(A) deleted the addition. On appeal by the revenue the Tribunal held that the CIT(A) is justified in holding that payment received by assessee did not fall within the category of royalty under article 12(3) of the India-USA DTAA hence cannot be taxed under section 9(1) (v) of the Act.(AY. 2014-15)
Dy.CIT v. Black Duck Software Inc (2022) 192 ITD 210 (Delhi)(Trib)

S. 9(1)(vi) : Income deemed to accrue or arise in India-Royalty Amounts paid as consideration for resale/use of computer software through EULAs/distribution agreements-Not payment of royalty for use of copyright-Does not give rise to any income taxable in India-Not liable to deduct any TDS under section 195 of the Act.[S. 195]
Assessee was engaged in offshore supply of standardized/shrink wrapped software and filed a 'NIL' return for the AY. The AO assessed the revenues from offshore supply of standardized/shrink wrapped software as income in the nature of royalty and taxing the same under the provisions of Section 9(1)(vi) of the Act. The Hon'ble DRP upheld the action of the AO. On appeal, the Tribunal relying on the decision of Hon'ble Supreme Court in the case Engineering Analysis Centre of Excellence Pvt. Ltd. (Civil Appeal Nos. 8733-8734 of 2018) which held that amounts paid by resident Indian end-users/distributors to non-resident computer software manufacturers/suppliers, as consideration for the resale/use of the computer software through EULAs/distribution agreements, held that the revenue from offshore supply of shrink wrapped software was not the payment of royalty for the use of copyright in the computer software, and that the same does not give rise to any income taxable in India. Accordingly,the Tribunal deleted the entire addition made by the AO. (AY. 2013-14, 2014-15)
GE Intelligent Platforms Asia Pacific Pte. Ltd. v. ACIT (2022) 94 ITR 707 (Delhi)(Trib.)

S. 9(1)(vii):Income deemed to accrue or arise in India-Fees for technical services-Technical services do not include construction, assembly and design-Dominant purpose of contract was supply of passenger rolling stock-Amount received under contract could not be deemed to accrue or arise in India [S. 194J, 201(IA)]
Dismissing the appeals the Court held that the contract was one for designing, manufacturing, supply, testing, commissioning of passenger rolling stock and training personnel. Dominant purpose of contract was supply of passenger rolling stock.Amount received under contract could not be deemed to accrue or arise in India therefore the tax and interest thereon levied under section 201(1A) were not valid.(AY.2011-12)
CIT v.Bangalore Metro Rail Corporation Ltd. (2022)449 ITR 431 288 Taxman 539 (Karn)(HC)

S. 9(1)(vii): Income deemed to accrue or arise in India-Fees for technical services-Payments received from Indian customers for centralised services--Not taxable as fees for technical services or fees for included services-DTAA-India-USA [Art, 12(4)(a)]

Court held that the entire payments received by the non-resident, from its Indian customers on account of centralized services of sales and marketing, loyalty programs and reservation, technological and operational services and training programs or human resources did not constitute "fees for technical services" under section 9(1)(vii) of the Income-tax Act, 1961 or "fees for included services" as defined under article 12(4)(a) of the Double Taxation Avoidance Agreement between India and the United States of America. The court also clarified that the order passed in the present appeals should abide by the final decision of the Supreme Court in Civil Appeal No.3094 of 2010, DIT v. Sheraton International Inc (2010) 323 ITR 47 SC) (St) (AY.2015-16)

CIT(IT) v. Westin Hotel Management LP (2022)449 ITR 489 / (2023)) 290 Taxman 262 (Delhi)(HC)

CIT(IT) v. Sheraton Overseas Management Corporation (2022)449 ITR 489 (Delhi)(HC)

S. 9(1)(vii):Income deemed to accrue or arise in India -Mailbox hosting services and data canter services - Fees for technical services - Projects related services does not quality as fees for technical services – Payment received as business profits -No permanent establishment in India – Not taxable - DTAA -India – Singapore [S.9(1)(i) , 9(1)(vi), 90 Art . 12 (4)(b)]

Held that the Assessee, a Singapore based company has not allowed use of its commercial or scientific experience or use or right to use any copyright of literary, artistic or scientific work or any patent, trade mark, design or model, plan, secret formula or process to the Indian company ATS while rendering project related services which involved simply mailbox hosting services and data center services through serves located outside India and, therefore, the payment received by the assessee for rendering said services relating to various projects did not constitute royalty under art. 12(3) of the Indo-Singapore DTAA. Tribunal also held that since there is nothing to suggest that ATS can use any technical knowledge, experience, skill, know-how or process independently on its own without the involvement of the assessee, the conditions of art. 12(4)(b) of the DTAA are not satisfied therefore, the payment received by the assessee did not qualify as fees for technical services either. (AY .2014 -15 , 2015 -16)

Atos Information Technology Singapore Pte. Ltd. v. Dy. CIT (IT) (2022) 215 TTJ 754 / 215 DTR 332 (Mum)(Trib)

S. 9(1)(vii):Income deemed to accrue or arise in India - Fees for technical services -Non-resident — The payment made to the non-resident was a fee for training for developing soft skills- Not taxable in India - Entitled to refund of taxes paid together with interest – No treaty between India and Hong Kong during relevant period . [S. 248]

Held, that the nature of services rendered by the non-resident was neither in the nature of technical, managerial or consultancy services as defined under the Act because technology was used in providing service. The delivery of a service via technological means did not make the service technical. Special skill or knowledge may be used in developing or creating

inputs to a service business. The fee for the provision of a service will not be a technical fee, unless that special skill or knowledge was required when the service was provided to the customers. The employees developing leadership skill through service provided by the non-resident do not use such knowledge when they provide business process outsourcing service to the customers of the assessee and hence, the services rendered could not be regarded as technical service. The service rendered by the non-resident did not teach the employees of the assessee how the business had to be run but related only to developing leadership skills and hence the service provided by the non-resident could not be regarded as managerial services. The provision of advice by someone, such as a professional, who has special qualifications allowing him to do so, would be consultancy service but imparting training in leadership skills could not be said to be providing advice by a professional, and could not be regarded as consultancy service. Therefore, the sum paid to the non-resident could not be regarded as fees for technical services within the meaning of section 9(1)(vii) of the Act and could not be taxed in the hands of the non-resident in India. Consequently, the assessee would be entitled to grant of refund of taxes paid together with interest thereon in accordance with law.(AY.2016-17)

Infosys BPO Ltd. v .Dy. CIT (IT) (2022) 99 ITR 607 (Bang)(Trib)

S. 9(1)(vii):Income deemed to accrue or arise in India - Fees for included services – Development and determination of short term business strategies – Payments not taxable –DTAA -India – USA [Art, 12 (4)(b)]

Held, dismissing the appeal, that the activities of the assessee were related to the general services agreement. As provided in paragraph (4)(b) of article 12 of the DTAA, if the technical and consulting services made available are technical knowledge, experience, skill, know-how or process or consist in the development and transfer of a technical plan or technical design they are considered to be technical or consultancy services. Consultancy services not of technical nature cannot fall under "included services". While undertaking the services, the assessee had not executed any contract to make any business so as to use services independently by applying the technology. The general services agreement receipts were not taxable under article 12 of the DTAA. The addition was deleted.(AY.2007-08, 2009-10)

Dy. CIT v. AC Nielsen Corporation (2022)99 ITR 75 (SN) 75 (Mum) (Trib)

S. 9(1)(vii):Income deemed to accrue or arise in India - Fees for technical services - Charges for management support services received by French Company – Not taxable in India – DTAA- India – France - Protocol 7 to double Taxation Avoidance Agreement Between India And France. [Art. 13]

The assessee claimed benefit of the provisions of article 13 of the Double Taxation Avoidance Agreement between India and the United Kingdom read with article 13 of the Double Taxation Avoidance Agreement between India and France and Protocol 7 to that Agreement according to which if the scope of taxability of fees for technical services is restricted on account of the Agreement between India and another Sate which is a member of the OECD then such limited scope would apply to the Double Taxation Avoidance Agreement between India and France in the same manner. The Assessing Officer held that the nature of support services provided by the assessee to Indian entities were in the nature of fees for technical services and that the Protocol under the Double Taxation Avoidance Agreement between India and France could not be treated as forming part of the Double Taxation Avoidance Agreement itself unless there was a notification issued by the

Government to incorporate the less restrictive provisions of the other treaty available. Accordingly he treated the revenue on account of intermediary services as taxable as fees for technical services. The Commissioner (Appeals) held that the amount received by the assessee during the year for provision of management support services was not taxable as fees for technical services under the Double Taxation Avoidance Agreement between India and France, since the make available test imported from the Double Taxation Avoidance Agreement between India and the United Kingdom into the Double Taxation Avoidance Agreement between India and France had not been satisfied in this case. On appeal the Tribunal affirmed the order of the CIT(A). Notification No. S.O. 650(E) dt . 1-7 -2000 (2000) 244 ITR 134 (St), Circular No. 3 of 2022 , dt. 3-2 -2022 (2022) 441 ITR 49 (St) (AY.2015-16)

Dy. CIT v. Converteam Group (2022) 99 ITR 34 (SN)(Delhi) (Trib)

S. 9(1)(vii):Income deemed to accrue or arise in India – Computer software - Fees for technical services - Sub-contracted certain overseas work in China to its wholly owned subsidiary- Liable to deduct tax at source – If rate of tax applicable under DTAA is lower than 20 per cent tax rate as prescribed under section 206AA, TDS has to be deducted at such lower rate even if non-resident deductee fails to furnish its PAN.- DTAA -India -China [S. 9(1)(vii)(b) ,195 , 206AA , Art. 12]

Assessee, an Indian company, is engaged in business of development and export of computer software and related services Assessee sub-contracted certain overseas work in China to Infosys China and made payment of sub-contracting charges to Infosys China . Assessing Officer held that payments made to Infosys China was liable for tax deduction under section 9(1)(vii) as fees for technical services (FTS). Tribunal held that in view of retrospective amendment to section 9, by Finance Act, 2010 and substitution of Explanation to said section, it is no longer necessary that in order to invite taxability under section 9(1)(vii), services must be rendered in Indian Tax jurisdiction and irrespective of situs of technical services having been rendered, according to India-China DTAA, fees for technical services will be deemed to have been accrued in tax jurisdiction in which person making payment is located . The assessee was liable to deduct TDS from payment made to Infosys China . Merely becasue clients were outside India that did not mean that assessee was carrying on business outside India and, thus, assessee's case did not fall within exception of section 9(1)(vii)(b) . Held that if rate of tax applicable under DTAA is lower than 20 per cent tax rate as prescribed under section 206AA, TDS has to be deducted at such lower rate even if non-resident deductee fails to furnish its PAN . Applicable TDS on sub-contracting charges paid to Infosys China by assessee should be considered at 10 per cent as per India-China DTAA instead of 20 per cent as per section 206AA of the Act .

Infosys Ltd. v. Dy. CIT (2022) 217 TTJ 257 / 217 DTR 169/ 140 taxmann.com 600 (Bang)(Trib)

S. 9(1)(vii):Income deemed to accrue or arise in India - Fees for technical services – Technical collaboration - Design and Engineering services - Through its two employees which were consumed in provision of services itself and nothing was 'made available' to TTL India or TML for afterwards use- Not chargeable to tax – Sale of software license and not for parting with copyright of software- Not taxable as Royalties- DTAA -India -USA [S. 9(1)(vi) Art. 12(4)]

Held that the manpower support required from assessee by TTL India was only of two personnel and, thus, assessee provided technical or consultancy services through its two employees which were consumed in provision of services itself and nothing was 'made available' to TTL India or TML for afterwards use. The assessee did not receive any fee for included services under article 12(4) and said fee is not chargebale to tax . Held that the assessee was a distributor of software licenses, who acquired software licenses from third party and sold same to Indian company against certain sum, since said sum was on account of sale of software licenses and not for parting with copyright of software, said amount could not be brought within ambit of Royalties under article 12 of DTAA. (AY. 2015-16)
Tata Technologies Inc. v. ACIT (IT) (2022) 209 DTR 166 / 215 TTJ 372 / 136 taxmann.com 161 (Pune)(Trib)

S. 9(1)(vii):Income deemed to accrue or arise in India - Fees for technical services -Sale of software- Not taxable as royalty – DTAA -India- USA [S. 90(2), Art . 12(3) 12(4)]

Where the assessee did not have a permanent establishment in India, no amounts of business profits could be taxed as fees for technical services. The assessee could not be taxed under the head fees for included services as well since though the services were provided by it by deputing two employees however there was nothing 'made available' by the assessee to its Indian counterparts hence the make available test was not satisfied. (AY. 2015-2016)
Tata Technologies Inc. v. ACIT (2022) 215 TTJ 372 (Pune) (Trib)

S. 9(1)(vii):Income deemed to accrue or arise in India-Fees for technical services-Royalty-Commission for providing customer and support sales services-Export commission/sales commission and could not be treated as FTS-DTAA-India-Germany [S.9(1)(vi), Art. 12]

Assessee, a German company, entered into a commissionaire agreement with an Indian company, SIPL. Assessee was appointed as a non-exclusive sales representative of SIPL and received commission for providing customer and support sales services.AO held that commission income was taxable as royalty under section 9(i)(vi) and also under DTAA. Held that commission received by assessee was merely export commission/sales commission and could not be treated as FTS. (AY. 2014-15, 2015-16)
Springer Verlag GmbH v. DCIT (2022) 197 ITD 173 (Delhi) (Trib.)

S. 9(1)(vii):Income deemed to accrue or arise in India-Fees for technical services-Pharmaceutical company-Clinical trials services-Not liable to deduct tax at source-DTAA-India-USA-Canada [S. 9(1)(vii), 195, Art, 12]

Assessee made remittances to parties in USA and Canada for clinical trials.AO held that assessee was liable to deduct taxes on said remittances as same were fees for technical services. Commissioner (Appeal) allowed relief in respect of payments made for clinical trials on ground that 'make available' clause was not satisfied as there was no transfer of any skills or knowledge to assessee by issuance of study reports. Held that W since condition of 'make available' under India-USA/India-Canada DTAA was not met, services would not qualify as 'fee for technical services/fee for included services'. Not liable to deduct tax at source.(AY. 2013-14)

Cadila Healthcare Ltd. v. DCIT (IT) (2022) 197 ITD 268 (Ahd) (Trib.)

S. 9(1)(vii):Income deemed to accrue or arise in India-Fees for technical services-Pharmaceutical company-Clinical trials services-Payment to Mexico-Absence of 'make available' clause-Liable to deduct tax at source-DTAA-India-Mexico.[S. 9(1)(viib),195, Art, 12]

Assessee made remittances to party in Mexico for clinical trials.AO held that assessee was liable to deduct taxes on said remittances as same were fees for technical services. Commissioner (Appeals) held that assessee would not fall within second exception provided under section 9(1)(vii)(b) on ground that all activities related to business of assessee were carried out in India and merely doing export activity from India could not be treated as business carried outside India. Held that since payments made by assessee were not covered by exception provided under section 9(1)(vii)(b) and there was absence of 'make available' clause in India-Mexico DTAA, services rendered to assessee would qualify as FTS/FIS and, thus, tax was to be deducted at source at time of payment of said services. (AY. 2013-14)

Cadila Healthcare Ltd. v. DCIT (IT) (2022) 197 ITD 268 (Ahd) (Trib.)

S. 9(1)(vii):Income deemed to accrue or arise in India-Fees for technical services-Commission-Sales promotion-No permanent establishment-Not taxable in India-Not liable to deduct tax at source-DTAA-India-USA-UK [S. 195, Art, 7]

Held that commission payment to non-resident agents/service providers for rendering services like sales promotion, marketing publicity and procuring sales order etc. was not FTS but business profit and in absence of permanent establishment of these service providers in India, such commission payments were not taxable in India.. (AY. 2010-11, 2012-13)

Apurva Goswami. v. DIT (IT) (2022) 196 ITD 10 (Delhi) (Trib.)

S. 9(1)(vii):Income deemed to accrue or arise in India-Fees for technical services-Indian Hotels-Providing services like worldwide publicity, marketing and advertisement services-Consideration received is not taxable as FTS-DTAA-India-USA [S. 9(1(vi), 90, Art, 12(4)(a), 12(4)(b)]

The assessee entered into two separate agreements with Indian hotels viz. Licence agreement for grant of right to use its trade name and received licence fee for same and; Centralized Services Agreement (CSA) for providing hotel related services which included worldwide publicity, marketing and advertisement services through its system of sales, advertisement, promotion, public relation and reservations and received centralized service fee for same. AO held that said centralised service fee was FTS/FIS under section 9(1)(vii) and article 12(4)(a) of DTAA, hence, taxable in India. CIT (A) held that services rendered by assessee under CSA were ancillary and subsidiary to license fee paid by assessee under license agreement for granting right to use of trade name which was offered to tax in India as royalty. Tribunal held that predominant object under centralised service agreement was advertisement, marketing and promotion of hotels-Centralized services fee received by assessee under centralised service agreement could not be considered to be ancillary and subsidiary to application or enjoyment of right of property or information for which royalty was paid.Accordingly such centralised service fee received by assessee for providing services like publicity, marketing and advertisement could not be treated as FTS/FIS either under article 12(4)(b) of India-US DTAA. (AY. 2015-16, 2016-17)

Starwood Hotels & Resorts Worldwide Inc. v. ACIT (IT) (2022) 196 ITD 28/ 99 ITR 464/ 219 TTJ 839 (Delhi) (Trib.)

S. 9(1)(vii):Income deemed to accrue or arise in India-Fees for technical services-Sale of software-Not taxable as Fees for technical services-DTAA-India-Singapore [S. 9(1)(vi), Art. 12(4)(a), 12(4)(b)]

Assessee, a Singapore based company, earned income from sale of Software licenses and support services. AO held the amount received on sale of software is taxable under article 12(4)(a) of DTAA as fees for technical services.AO also held that c receipt was for making available technical knowledge etc. to software buyers and hence also covered under article 12(4)(b) of DTAA. Held that since the assessee provided services laced with technical know-how, but did not provide any technical knowledge, experience or skill etc. to recipients for their own application in future without assistance of assessee, i.e, did not 'make available' any technical knowledge, experience or skill etc. to its customers to apply in future, income from IT support services could not be taxed as FTS under article 12(4)(b). Therefore, amount received by assessee for providing IT support services in relation to software sale was not taxable as FTS either under article 12(4)(a) or under article 12(4)(b). (AY. 2018-19)

BMC Software Asia Pacific Pte Ltd. v. ACIT (IT) (2022) 196 ITD 390 / 220 TTJ 74 / 220 DTR 201 (Pune) (Trib.)

S. 9(1)(vii):Income deemed to accrue or arise in India-Fees for technical services-Make available-Business support services-Receipts from said services would not be treated as FTS-DTAA-India-Singapore [Art. 12(4)]

The assessee rendered business support services to its Indian AE and claimed that amount received for said services would not be taxable in India.AO held that assessee provided training which enabled service recipient to make use of technical knowledge, experience, skills, know-how etc. on its own without depending on assessee and held that make available clause was satisfied and receipts were to be treated as FTS as per section 9(1)(vii) and article 12(4) of DTAA. DRP confirmed order of AO. Held that mere incidental benefit or enrichment which might add to capabilities of service recipient would not be sufficient to satisfy make available clause when critical factor of transfer of skills or technology was not satisfied. therefore, AO was directed to exclude amount received from assessee's taxable income. (AY. 2017-18)

NTT Asia Pacific Holdings Pte Ltd. v. ACIT, IT(2022) 196 ITD 591 / 220 TTJ 1080/(2023) 222 DTR 11 (Mum) (Trib.)

S. 9(1)(vii):Income deemed to accrue or arise in India-Fees for technical services-Make available-Business support services-Receipts from said services would not be treated as FTS-DTAA-India-Singapore [Art. 12(4)]

The assessee rendered business support services to its Indian AE and claimed that amount received for said services would not be taxable in India.AO held that assessee provided training which enabled service recipient to make use of technical knowledge, experience, skills, know-how etc. on its own without depending on assessee and held that make available clause was satisfied and receipts were to be treated as FTS as per section 9(1)(vii) and article 12(4) of DTAA. DRP confirmed order of AO. Held that mere incidental benefit or enrichment which might add to capabilities of service recipient would not be sufficient to satisfy make available clause when critical factor of transfer of skills or technology was not satisfied. therefore, AO was directed to exclude amount received from assessee's taxable income. (AY. 2017-18)

NTT Asia Pacific Holdings Pte Ltd. v. ACIT, IT(2022) 196 ITD 591 / 220 TTJ 1080/(2023) 222 DTR 11 (Mum) (Trib.)

S. 9(1)(vii): Income deemed to accrue or arise in India-Fees for technical services-Foreign agents-Introduction of students –-Payment on account of evaluation of Ph.D thesis could not be treated as fees for technical service-Educating faculty and staff-Cannot be treated as managerial or technical services-Not liable to deduct tax at source-DTAA-India-Singapore [S. 195, Art. 12]

Assessee paid a certain sum to foreign agents for recruitment of international students to various courses in India. Tribunal held that the nature of services rendered by these foreign agents was simply marketing services, introducing foreign students to take admission to university and, therefore, remittances made by the assessee outside India to these agents could not be deemed to accrue or arise in India. Not liable to deduct tax at source. Payment on account of the evaluation of PhD thesis could not be treated as fees for technical service. (AY. 2011-12 to 2016-17)

Sharda Educational Trust. v.ITO (TDS) (2022) 97 ITR 456 / 195 ITD 415 (Delhi) (Trib.)

S. 9(1)(vii): Income deemed to accrue or arise in India-Fees for technical services-Foreign universities-Examination fees from students-Neither technical services or royalty services-Not liable to deduct tax at source-DTAA-India-UK-Switzerland [S.9(1)(vi), 195, Art, 12(5)(a), 13(5)(c)]

Assessee, running a school, made payments to two foreign universities/institutions in connection with schools made payments included examination fees collected from students and fees for syllabus, setting up of question papers, training of teachers, etc. and assessee did not deduct TDS under section 195 of the Act. The AO held that skilled educational services were rendered by these foreign universities to the assessee and, therefore, such services fell in the ambit of the expression 'FTS'. Said remittance to foreign universities was not from funds of assessee, but the fee was collected from students and directly remitted to foreign universities and no part of such receipt was retained by assessee, nor was any additional expenditure in that respect incurred by assessee. Held that the assessee was imparting instructions in India as per the syllabus set by foreign universities, and subsequently, foreign universities were conducting examinations before issuing degrees. Since Article 13(5)(c) of DTAA between India and UK and Article 12(5)(a) of DTAA between India and Switzerland clearly read that definition of ‘fee for technical services’ does not include any amount paid for teaching in or by educational institutions and expression ‘teaching in or by educational institution’ includes the activity of examinations also, the amount paid to two universities did not come under clutches of technical services or royalty services. (AY. 2012-13 to 2016-17)

DCIT v. Hyderabad Educational Institutions (P.) Ltd. (2022) 195 ITD 746 (Hyd) (Trib.)

S. 9(1)(vii) : Income deemed to accrue or arise in India-Fees for technical services-Management support services to its Indian subsidiary-Master consultant sharing agreement to supply manpower-Miscellaneous services to third parties in India-Not taxable as FIS-DTAA-India-USA [S. 9(1)(vi) Art 12]

Held that since services provided by assessee were not technical services which required technical knowledge, skill or experience and were general managerial services received from assessee on recurring basis, management fee received for said services would not be taxable as FIS under India US DTAA. As regards Master consultant sharing agreement to supply manpower,since there was no rendition of technical or consultancy services which would enable Indian subsidiary to apply any technical knowledge, experience, skill, know-how on its own without recourse to manpower supplied by assessee, labour charges received by assessee would not be taxable as FIS under India-USA DTAA. As regards miscellaneous services to third parties in India which consisted of access to published research reports by providing subscription for same, since assessee granted only a right to use copyrighted material rather than right to use copyright, subscription fees received by assessee would not be taxable as royalty under India-USA DTAA. (AY. 2010-11 to 2012-13)
Everest Global Inc. v. DIT (IT) (2022) 194 ITD 729 (Delhi) (Trib.)

S. 9(1)(vii):Income deemed to accrue or arise in India-Fees for technical services-Offshore maintenance and support services to Power Grid Corporation of India Ltd. (PGCIL)-Not assessable as fees for technical services-DTAA-India-USA[Art. 12(4)]

Assessee-foreign company provided offshore maintenance and support services to Power Grid Corporation of India Ltd. (PGCIL).AO held that services rendered by assessee to PGCIL were taxable as fees for included services (FIS) under section 9(1)(vii) of the Act. On appeal the Tribunal held that since nature of services provided by assessee were repetitive in nature, it could not be conduced that such services make available any technical knowledge, expertise, skill, know-how or processes to PGCIL thus, receipts from PGCIL would not qualify as fees for included services under article 12(4)(a) and 12(4)(b) of India US DTAA. (AY. 2008-09 to 2014-15)
GE Energy Management Services Inc. v. ACIT (IT) (2022) 193 ITD 485 / 215 TTJ 7 / 209 DTR 204 (Delhi) (Trib.)

S. 9(1)(vii):Income deemed to accrue or arise in India-Fees for technical services-Offshore maintenance and support services to Power Grid Corporation of India Ltd. (PGCIL)-Not assessable as fees for technical services-DTAA-India-USA[Art. 12(4)]

Assessee-foreign company provided offshore maintenance and support services to Power Grid Corporation of India Ltd. (PGCIL).AO held that services rendered by assessee to PGCIL were taxable as fees for included services (FIS) under section 9(1)(vii) of the Act. On appeal the Tribunal held that since nature of services provided by assessee were repetitive in

nature, it could not be conduced that such services make available any technical knowledge, expertise, skill, know-how or processes to PGCIL thus, receipts from PGCIL would not qualify as fees for included services under article 12(4)(a) and 12(4)(b) of India US DTAA. (AY. 2008-09 to 2014-15)

GE Energy Management Services Inc. v. ACIT (IT) (2022) 193 ITD 485 / 215 TTJ 7 (Delhi) (Trib.)

S. 9(1)(vii):Income deemed to accrue or arise in India-Fees for technical services-Royalty-Reimbursement of expenses-Costs recovered by assessee a non-resident for third party software which was integrated into assessee's information technology infrastructure used for rendering services to an Indian company, would be taxable as fees for technical services/Royalty-DTAA-India-Switzerland. [S. 9(1) (vi),Art, 12]

Held that costs recovered by assessee a non-resident for third party software which was integrated into assessee's IT infrastructure used for rendering services to an Indian company would be taxable as fees for technical services/Royalty as per DTAA between India and Switzerland. on the facts of the case neither undiluted benefit of software cost was passed on to RIPL nor did assessee recover amount as it is from RIPL authorities below were fully justified in including Rs. 3.89 crores in total income of assessee and charging it to tax at 10 per cent in parity with assesseesuo motu offering Rs. 20.04 crores to tax at same rate. (AY. 2016-17)

Rieter Machine works Limited v. ACIT (IT) (2022) 193 ITD 687 /93 ITR 447/ 217 TTJ 726/ 213 DTR 185 (Pune) (Trib)

S. 9(1)(vii):Income deemed to accrue or arise in India-Fees for technical services-Legal fees-Services rendered by a non-resident law firm-Not taxable in India-Not liable to deduct tax at source-The firm had given a certificate stating that there was no fixed place of business/PE in India, impugned fee paid by assessee did not trigger taxability under article 15 of India-DTAA-India-Poland [S. 195, Art, 4 13 (4), 15]

Assessee made payments towards legal service rendered to it by a law firm, a limited partnership, in Poland. The AO held that the said payment made by assessee was in nature of 'fees for technical services' as defined in article 13 and same was chargeable to tax in India, thus, TDS was to be deducted. On appeal the Tribunal held that payment made by assessee towards legal services rendered by a non-resident law firm could not be treated as 'fees for technical services' under article 13(4) hence not liable to deduct tax at source. The firm had given a certificate stating that there was no fixed place of business/PE in India, impugned fee paid by assessee did not trigger taxability under article 15 of India-Poland DTAA. (AY. 2015-16, 2016-17)

Infosys BPO Ltd. v. DCIT (2022) 192 ITD 94/ / 217 TTJ 478/ 214 DTR 89 (Bang) (Trib.)

S. 9(1)(vii):Income deemed to accrue or arise in India-Fees for technical services-Service provider-Entire process resulting in provisioning of service was fully automated process with no human intervention, charges paid for provision of such services could not be classified as FTS-Not liable to deduct tax at source-OECD Model, Art, 12.[S. 195]

The assesseeis engaged in the business of designing and manufacturing of cores and other amorphous metal or nanocrystaline soft magnetic metal used in transmission and distribution equipment and in electronic and computer products and other related products. During the

year, the assessee-company paid for support & analysis system provided by three A.E.s, namely, Metglass INC USA, Hitachi. Singapore and Hitachi Japan. With this support system & analysis, the assessee company was producing certain articles or things in India.The AO held that the services rendered were such which required expertise and knowledge in the specific area of work and such expertise could not be developed overnight but was the result of long period of work in this line of activities coupled with accumulated experience of operations. Hence, the payments made by the assessee to its AEs partook of USA, the character of FTS. The Commissioner (Appeals) confirmed the action of the AO holding that human intervention was in fact an integral part of the said service agreement. On appeal the Tribunal held that the foreign AE (service provider) has neither employed any technical or skilled person to provide managerial or technical service nor there was direct interaction between the assessee and the foreign AE and the entire process resulting in provisioning of service is fully automated process with no human intervention, charges paid for provision of such services cannot be classified as FTS for the purpose of the IT Act, hence, the assessee was not liable to deduct TDS on such expenditures. (AY. 2011-12)

Hitachi Metglas (India) (P.) Ltd. v. DCIT (2022) 192 ITD 357 / 217 TTJ 743/ 214 DTR 15 (Delhi) (Trib.)

S. 9(1)(vii):Income deemed to accrue or arise in India-Fees for technical services-Support service agreement-No transfer of technology nor transfer of any skill or know-how, management-Support services in relation to operational, accounting, training and recruitment etc. would not be regarded as services which was 'make available' and accordingly, not taxable as 'fees for technical services' under article 12(4) of India-Singapore tax treaty. [Art, 12(4)]

The assessee earned revenue from an Indian group company (IHG India) on account of management support costs. Based on the nature of services enumerated under the support service agreement with IHG India, the assessee provided operational support, accounting and legal support, information technology related services etc. The AO made addition for management support charges to the income of the assessee as fees for technical services (FTS) under the provisions of the India-Singapore tax treaty. CIT (A) confirmed the order of the AO. On appeal the Tribunal held that support services in relation to operational, accounting, training and recruitment etc. would not be regarded as services which was 'make available' and accordingly, not taxable as 'fees for technical services' under article 12(4) of India-Singapore tax treaty. (AY. 2012-13)

Inter Continental Hotels Group (Asia Pacific) (Pte.) Ltd. v. ACIT (2022) 192 ITD 497 (Delhi) (Trib.)

S. 10(2A) : Share income of partner – Cannot be added as taxable income .

Held that the share of profit earned by the assessee from the firm SPC was exempt under section 10(2A) of the Act and it could not be added to the total income of the assessee. Addition was deleted (AY. 2016-17)

Aarthi Rathi (Ms.) v .ITO(IT) (2022) 98 ITR 16 (SN)(Hyd) (Trib)

S. 10(2A): Share income of partner - Profits from partnership in Limited Liability Partnership - Profit sharing ratio 95:5- -20 years experience – Denial of exemption is not justified . [S. 2(31)(iv), 2(31)(vii]

The Tribunal held that since the assessee had only received the share of profit from limited liability partnership at the agreed rate of 95 percent of the profits and the identity of the limited liability partnership was not in dispute, its constitution, agreement, sharing ratio, capital contribution ratio and the audited financial statements were not in dispute, there was no justification in disallowing the exemption by the Assessing Officer . Order of CIT (A) is affirmed .(AY. 2016 -17)

Jt. CIT (OSD) v. Aditya Kumar Singhania (2022)97 ITR 7 (SN) (Kol) (Trib)

S. 10(2A) : Share income of partner-Details of partners with their PAN copy of returns of firm with computation of income was furnished-Partner entitled to exemption.

Held that where the assessee had furnished complete details of partners with their PAN copy of returns of firm with computation of income denial of exemption in respect of share of profit received from the firm is not valid. The AO was directed to allow full relief to the assessee.(AY. 2012-13)

Mukesh Nanubhai Desai v. ACIT (2022)96 ITR 258 (Surat) (Trib)

S. 10(4) : Non-resident – Interest received on NRE bank accounts – Capital gains on sale of shares - Unexplained cash credits – Amount received money from a company based in British Virgin Island- Matter remanded to the file of CIT(A) – Method of elimination of double taxation - Portuguese citizen - Interest wrongly charged - Does not amount to non-discrimination under Indo-Portuguese tax treaty- DTAA -India – Portugal [S. 68 , Art. 24(1)]

Assessee is an NRI filed his return of income and claimed exempt income towards interest received on NRE bank accounts and capital gains on sale of share . As regards inward remittances the AO treated the receipts from dubious companies mentioned in panama papers and accordingly made additions under section 68 of the Act . On appeal the assessee had filed additional evidence in form of certain e-mails between TII and its bankers, certificates of incumbency of two customers of TII to prove genuineness of said transaction. Tribunal held that just because assessee had received money from a company based in BVI, it could not be taxed as unexplained credit , however the burden on assessee to prove the source . Accordingly the matter was to be remitted back to file of Commissioner (Appeals) with a direction to adjudicate on matter de novo after giving assessee one more opportunity to prove creditworthiness of said company and genuineness of transaction . Tribunal also held that Article 24(1) can come into play only when discrimination is based on nationality, if interest is wrongly charged by Assessing Officer, then just because assessee is a Portuguese citizen, it does not amount to non-discrimination under Indo-Portuguese tax treaty. (AY. 2016 -17)

Nurally Mamade Hussene v. ITO (2022) 220 DTR 180/ 220 TTJ 1075 / (2023] 198 ITD 278 (Mum.)(Trib.)

S. 10(5) : Travel concession or assistance-Leave travel allowance-State Bank of India Officers' Service Rules stating that leave travel concession available only to travel inside India-Administrative instructions extending leave travel concession for travel outside India-Not valid-Not entitled to additional benefit [Art, 226]

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Held, dismissing the writ petitions, that the officers of the State Bank of India were eligible to avail of the benefit of leave travel concession and leave encashment in accordance with rule 44 of the State Bank of India Officers' Service Rules and any other additional benefit granted beyond the scope of the Rules could not be claimed as an absolute right. Thus, the withdrawal would not infringe the rights of the employees nor cause them any prejudice and

thus, there was no perversity in the decision taken for withdrawal of the additional concession granted to the officers of State Bank of India to travel abroad under the leave travel concession scheme. When the Government of India specifically passed a memorandum that the leave travel concessions to officers of public sector undertakings and others are to be restricted on par with the Government of India scheme, there is a context and meaning with reference to certain foreign affairs and therefore, there was no infirmity in the order passed by the respondents cancelling the concession extended to travel abroad under leave travel concession facility. The concession and the facility extended to foreign travel expenses was given by way of an additional facility through a letter and the facility was withdrawn pursuant to the orders of the Government of India, Ministry of Finance and the circular issued by the Indian Banks' Association. The policy of the Government of India, Ministry of Finance is to be followed in the interest of public by all public sector banks, which was adopted by the Indian Banks' Association. (SJ)

All India State Bank Officers Federation v. State Bank of India (2022)447 ITR 559 (Mad)(HC)

S. 10(5) : Travel concession or assistance--Exemption confined to amount of Air economy fare by shortest route by National carrier-Exemption not available in respect of travel to Foreign country as part of journey to destination in India.[S. 133A,182, 201(1), 201(1A), R. 2B]

Dismissing the appeal of the assessee, the Court held that exemption was confined to amount of Air economy fare by shortest route by National carrier. Exemption was not available in respect of travel to Foreign country as part of journey to a destination in India. For failure to deduct tax at source the assesseewas treated as assessee in default and held liable for interest.(AY.2011-12, 2012-13, 2013-14)
State Bank of India v. ACIT (TDS) (2022)442 ITR 363 (Karn)(HC)

S. 10(6) : Not a citizen of India – Salary to foreign citizen - Service passport issued by Government of Austria - Full-time employment with Austrian Embassy as a consultant in commercial section- Remuneration received is not taxable - DTAA -India- Australia [S. 10(6)(ii) , Art , 27 , 34 of Vienna convention]

Assessee was appointed as a consultant in Austrian Trade Commission responsible as head of Technology at Austrian Trade. He received monthly remuneration and claimed exemption under section 10(6)(ii) of the Act . On appeal the Tribunal held that the certificate issued by Austrian Embassy clearly revealed that assessee was appointed as a consultant in Austrian Trade Commission and had been under full time employment with Austrian Embassy, Commercial Section. The assessee was not having an ordinary passport, but, a service passport was issued by Government of Austria . The Assessing Officer was directed to grant exemption to assessee as per section 10(6)(ii) of the Act .(AY. 2010 -11)
Vera Fritsch. v. DCIT IT (2022) 220 TTJ 509 / 219 DTR 154 / (2023) 198 ITD 387 (SMC) (Delhi) (Trib.)

S. 10(10AA) : Leave salary-Employee of the Central Government or State Government-Encashed earned leave by employees Government employee-Tamil Nadu

Agricultural University-Funded by State Government and under its control-Retired Employees Of Tamil Nadu Agricultural University-Entitled to exemption.[S. 192(2A), Tamil Nadu Agricultural University Act, 1971 S. 7,9]

Allowing the petition the Court held that the Tamil Nadu Agricultural University is a university that is constituted under a State Act. Section 7 of the Tamil Nadu Agricultural University Act, 1971 provides for an unfettered right of the State to inspect and conduct enquiry into the management of the university, its various activities including teaching, the work conducted by the university, conduct of examinations as well as person or persons who are connected with the administration or finances of the university, by the State. The power exercised by the State Government in the functioning and management of the university is unbridled. The Governor of Tamil Nadu is, in terms of section 9 of the Act, the Chancellor of the University. The funding of the university is entirely at the behest of the State Government. Hence the Tamil Nadu Agricultural University is a part of the State and employees of the Tamil Nadu Agricultural University are Government servants, entitled to the benefit of exemption under section 10(10AA)(i) of the Act. Accordingly, that the circular dated February 17, 2015 and consequent communications dated October 30, 2018, March 19, 2019 and November 14, 2016 issued to the petitioners, employees of the Tamil Nadu Agricultural University, by the University, were contrary to law and liable to be set aside. (SJ)

Dr. P. Balasubramanian v. CCIT(TDS) (2022)448 ITR 318/ 217 DTR 163/ 328 CTR 497 (Mad) (HC)

S. 10(10C) :Public sector companies-Voluntary retirement scheme-Relinquished charge as Managing Director and took over as advisor-Denial of exemption was not justified-Order of Tribunal was held to be utterly perverse,non speaking and without taking note of the factual position which has been brought out by the CIT(A).[S. 254(1), 260A]

AOdenied the exemption u/s 10(10C) of the Act. On appeal Commissioner (Appeals) held that application for voluntary retirement was accepted by employer with effect from 31-12-1992 on which date assessee was to retire voluntarily as Managing Director of company and take over charge as advisor.Accordingly allowed the claim of the assessee. Tribunal denied claim on ground that letter of acceptance of VRS was issued on 1-1-1993 after assessee joined as an advisor and on same day he opted for VRS in capacity of his present position for which he did not draw even half day salary. On appeal the Court held that since Tribunal without appreciating factual position with respect to actual date of retirement on voluntary basis as was recorded by Commissioner (Appeals) reversed order on ground that assessee did not draw any salary even for half day, impugned order was erroneous and assessee was to be allowed exemption under section 10(10C) of the Act. The Court also observed that the order of Tribunal was utterly perverse,non speaking and without taking note of the factual position which has been brought out by the CIT(A) (AY. 1993-94)

Premila Bhatia. v. CIT(2022) 289 Taxman 527 (Cal)(HC)

S. 10(10D) : Life insurance policy-Keyman insurance policy-Single premium paid-Neither claimed deduction of premium paid nor under section 10(10D)-Offering the receipt to tax after deducting the premium paid-Held to be proper Entire sum received as maturity benefit cannot be taxed [S. 80C, 194DA]

Held, that while introducing the Finance (No. 2) Bill, 2019 the Legislature took note of concerns expressed that deducting tax under section 194DA of the Act on the gross amount under a life insurance policy, which is not exempt under section 10(10D), created difficulties

to an assessee who otherwise had to pay tax on the net income, (i. e., after deducting the insurance premium paid from the total sum received) and observed that it was preferable to deduct tax on the net income so that the income as per the return of the deductor of tax deducted at source could be matched automatically with the return of income filed by the assessee. From this observation and taking note of the fact that the assessee had neither availed of any deduction under section 80C of the Act in respect of the premium paid to SBI nor claimed any deduction under section 10(10D) of the Act and had offered Rs. 3,09,000 to tax in his return, no addition was warranted. Only the net amount that is Rs. 3,09,000 should have been taxed, which the assessee had already offered to tax in his return. The addition of Rs. 10 lakhs was to be deleted.(AY. 2017-18)

Sandeep Modi v. Dy. CIT (2022)94 ITR 69 (SN) (SMC) (Kol)(Trib)

S. 10(13A) : House rent allowance-Stayed at accommodation provided by employer-Surrendered the accommodation to stay at a hotel at his own expense-Not eligible to receive any HRA from his employer.[ITRules 1962, R. 3]

Dismissing the petition the Court held that where petitioner was accommodated at guest house by employer-company immediately on his transferred posting, however petitioner stayed there only for a short while and after surrendering said accommodation went on to stay at a hotel at his own expense, petitioner would not be eligible to receive any HRA from his employer.

Arup Ratan Gooptu v. Coal India Ltd. (2022) 288 Taxman 189 (Cal)(HC)

S. 10(13A) : House rent allowance-Loan to spouse-Purchase of house property in the name of wife-House rent paid to wife-Denial of exemption is not valid [S. 64]

Held that since sources for purchase of house in hands of assessee's wife were proved, rather never doubted, assessee could not have been denied HRA exemption for rent paid to wife.(AY. 2013-14)

Abhay Kumar Mittal. v. DCIT (2022) 194 ITD 224/ 217 TTJ 252/ 213 DTR 61 (Delhi) (Trib.)

S. 10(20) :Local authority-Appeal to High Court-Assessee not claiming benefit under section 10(20)-High Court not justified in dismissing Department's appeals granting benefit-Order of High Court set aside with the direction to consider the appeals afresh in accordance with law and on merits.[S. 260A]

On appeal against the judgment of the High Court dismissing the Department's appeals and granting the assessee the benefit under section 10(20) of the Income-tax Act, 1961, allowing the appeal, that when the assessee had never claimed the benefit under section 10(20) of the Act, the High Court was not justified in dismissing the appeals granting the benefit to the assessee under section 10(20) of the Act. The High Court is directed to consider the appeals afresh in accordance with law and on their own merits. Matter remanded.

CIT (E) v. Jaipur Development Authority (2022) 447 ITR 646 /218 DTR 530 / 329 CTR 222 /145 taxmann.com 119/ (2023) 290 Taxman 109 (SC)

S. 10(20) :Local authority-Development authority-Not State Separate legal entity-Fees collected for infrastructure development would be treated as income of assessee and would be liable to be taxed.[U.P Urban, Planning and Development Act, 1973, Constitution of India, 1950, Art, 289]

Assessee-development authority was constituted under U.P Urban, Planning and Development Act, 1973.Assessee collected fees and maintained an infrastructure fund as per directions of State Government out of which infrastructure related expenses were incurred.Assessee claimed that State Government had a overriding title on these receipts and they did not form part of its income.AO allowed infrastructure expenses but rejected claim of assessee with respect to diversion of receipts by overriding title and made addition with respect to balance infrastructure funds in hands of assessee.Order was affirmed by CIT(A) and Tribunal. On appeal the High Court held that assessee being a separate legal entity with its own assets and liabilities, would be distinct from State Government, thus, fees collected for infrastructure development would be treated as income of assessee and would be liable to be taxed in the hands ofthe assessee. (AY. 2006-07, 2007-08)

Mussoorie Dehradun Development Authority v. Add.CIT (2022) 288 Taxman 113 / 140 taxmann.com 192 /220 DTR 421 (Uttarakhand) (HC)

S. 10(21) : Scientific research association Agricultural research Registered under Tamil Nadu Societies Registration Act-Entitled to exemption. [Tamil Nadu Societies Registration Act, 1975]

Dismissing the appeal of the Revenue the Court held that ever since the inception of the assessee-society, it had been treated as an association. It was not disputed that the assessee was registered under the provisions of the Tamil Nadu Societies Registration Act, 1975 and had been treated as an association/society since 1987. On the facts and in the circumstances of the case the Tribunal was right in holding that the assessee was entitled to exemption under section 10(21) of the Act. (AY.2010-11, 2011-12 and 2015-16)

CIT v. International Institute of Bio-Technology and Toxicology (2022) 445 ITR 499 (Mad) (HC)

S. 10 (23C): Educational institution-Solely for educational purposes and not for purposes of profit-Profits of business not exempt unless business incidental to attainment of objectives and separate books of account maintained in respect of such business-Institution should also comply with provisions of State laws regulating activities of charitable institutions-Commissioner not bound to examine only objects of institution-Free to call for audited accounts or documents for recording satisfaction whether institution genuinely seeks to achieve objects-Prospective declaration of law-Appeals against rejection of applications for approval-Appeals dismissed-Law declared departing from previous rulings-Applications to be considered in light of subsequent events disclosed in fresh applications-Law declared by Supreme Court to operate prospectively-Interpretation of taxing statutes-Literal interpretation-Proviso[S. 2(15) 10(23C(vi) 11(4A), Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987, S 1(3)(A), 2(4), (5), 43, 44.]

On appeals from the decision of the High Court, dismissing the assessees' writ petitions against rejection of their applications for approval under section 10(23C)(vi) of the Income-tax Act, 1961, holding that the assessee-trusts were not created "solely" for the purpose of education, and that to determine that issue, the court had to consider the memorandum of association or the rules or the constitution of the assessees, and that the assessees were not registered under the Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987 as condition precedent for grant of approval.Court also held that profits of business not exempt unless business incidental to attainment of objectives and

separate books of account maintained in respect of such business. Institution should also comply with provisions of State laws regulating activities of charitable institutions. Commissioner not bound to examine only objects of institution. Free to call for audited accounts or documents for recording satisfaction whether institution genuinely seeks to achieve objects.Law declared departing from previous rulings. Applications to be considered in light of subsequent events disclosed in fresh applications. Law declared by Supreme Court to operate prospectively. Taxing statutes are to be construed in terms of their plain language. If the language is unambiguous and capable of one meaning, that alone should be applied and not any other, based on the surmise that Parliament or the Legislature intended it to be so. In other words, it is only in cases of ambiguity that the court can use other aids to discern the true meaning. Where the statute is clear and the words plain, the legislation has to be given effect in its own terms. It is only when the application of the literal interpretation gives rise to an absurdity, that the interpretation should be expansive. The object of a proviso is to except from the main provision something enacted in the substantive clause. It cannot by itself be read as a substantive provision. Normally a proviso is meant to be an exception to something within the main enactment or to qualify something enacted therein which but for the proviso would be within the purview of the enactment. A proviso cannot be torn apart from the main enactment nor can it be used to nullify or set at naught the real object of the main enactment.

New Noble Educational Society v. CCIT (2022)448 ITR 594/ 219 DTR 89 / 329 CTR 137 /143 taxmann.com 276 / (2023) 290 Taxman 206 (SC)

St. Augustine Educational Society v. CCIT (2022)448 ITR 594 / 219 DTR 89 / 329 CTR 137 (SC)

St. Patrick Educational Society (2022)448 ITR 594 / 219 DTR 89 / 329 CTR 137 (SC)

Sri Koundinya Education Society (2022)448 ITR 594 / 219 DTR 89 / 329 CTR 137 (SC)

R.R.M.Education Society (2022)448 ITR 594 / 219 DTR 89 / 329 CTR 137 (SC)

S. 10 (23C): Educational institution-Amounts given as donation by relatives of students seeking admission to institution run by Charitable Trust to sister Trust-Sister Trust giving amounts to assessee running educational institutions-Amounts given not voluntary contribution But In Reality Capitation Fees-Court Could lift veil of trusts-Not entitled to exemption on sums received from sister Trust-Activities of trust not charitable-Registration to be cancelled-The statements given to the AO under section 132(4) had legal force. Unless retractions are made within a short span of time, supported by affidavit swearing that the contents were incorrect and that the statement was obtained under force, coercion and by lodging a complaint with higher officials, they could not be treated as retracted..[S.2((15) 11,12, 12AA, 13, 132(4), Tamil Nadu Educational Institutions (Prohibition Of Collection of capitation Fee) Act, 1992, S.4]

Allowing the appeal of the Revenue the Court held that the sister trusts in whose favour donations had been made in close proximity to the admissions made in respect of the students, were run by common controlling trustees. What educational institutions were doing directly prior to the coming into force of the 1992 Act, was now being done in a manner as to doubly benefit them by not only indulging in such statutory offences but also seeking the benefit of tax exemptions by adopting a special modus operandi. Since the assessee-trusts were controlled by common trustees and were indeed sister trusts, the Court could lift the veil to see the real beneficiaries and the object of the donations by relatives and friends of parents as quid pro quo for admissions into the assessee's educational institutions as well as the other assessees who were not educational institutions. An elaborate exercise was undertaken by the AO by issuing summons to various persons and their sworn statements were recorded. These sworn statements pointed to the factum of payment of amounts extending to at least around

Rs. 5 lakhs in each of the cases as well as the nexus between the assessee-institutions. The fact that these payments were made by the relatives and friends of the parents of the students who obtained admission in the assessee-institutions would prove the nature of the donations and the reasons therefor. That apart, it was clearly evident that the funds given for admissions, had been routed through the other trusts. The statements given to the AO under section 132(4) had legal force. Unless retractions are made within a short span of time, supported by affidavit swearing that the contents were incorrect and that the statement was obtained under force, coercion and by lodging a complaint with higher officials, they could not be treated as retracted. The very modus operandi adopted by the educational institutions was not in the form of direct coercion, but in the manner of admitting students on the clear understanding that such seats were offered in return for donations, which were nothing but capitation fee. The fact that a long-winding and indirect route had been adopted for capitation fee to reach the institution could not change the character of the payment from an illegal capitation fee to a voluntary contribution or donation. The amounts collected by the assessees were capitation fee as quid pro quo for allotment of seat in deviation of the Tamil Nadu Educational Institutions (Prohibition of Collection of Capitation Fee) Act, 1992 and were neither a voluntary contribution nor to be treated as applied for charitable purpose. That apart, the fact that no action had been initiated by the State could not be a reason to allow the exemption under the provisions of the Act or absolve the assessees of the liability, that too after the device to route the capitation fee was discovered. Further, it is also settled law that illegality cannot be perpetuated. Similarly, any decision even in the assessees' own cases could not have any bearing on the adjudication of the issues because each assessment is independent and had to rest on its own facts. When the contributions could not be treated as voluntary, the further question of their application to charitable purposes or otherwise, need not be gone into, meaning thereby that the assessees were not entitled to the benefits of sections 11 and 12 of the Act. The assessing authority was directed to cancel the registration and also proceed to reopen the previous assessments, if permissible by law, based on tangible materials relating to collection of capitalisation fee, since it is illegal and is punishable.(AY.2011-12 to 2014-15)

CIT v. MAC Public Charitable Trust(2022) 219 DTR 385 / (2023) 450 ITR 368 (Mad)(HC)

S. 10 (23C): Educational institution-Placement services-Associated with education-Fee charged-Entitle to exemption [S. 10(23C)(vi), Art, 226]

The object of the Trust is to impart scientific and technical education and research facilities. The Commissioner rejected the application for exemption on the ground that the Trust did not exist solely foreducational purposes. On writ allowing the petition the Court held that there was sufficient nexus demonstrated by the assessee between the expenditure incurred on the incidental activities of providing food, lodging and transport and other facilities to the trainers, the trainees and the staff and the object for which the assessee's institutions operated. Placement services also associated with education. This could not be completely separated from the essential activity of imparting education and training. The assessee was entitled to exemption under section 10(23C)(vi) in respect of its entire income.(AY.2009-10)

Orissa Trust of Technical Education and Training v. CCIT (2022)449 ITR 334/ 287 Taxman 616 (Orissa)(HC)

S. 10 (23C): Educational institution-Medical university-Statement of accountant of a promotor/sponsor-Books of account-Refusal of registration and approval under section 80G is held to be not valid [S. 10(23)(vi), 12AA, 80G (5)(vi)]

Assessee, a medical university, created under State Act, had filed an application seeking approval under section 80G(5)(vi) and exemption under section 10(23C).It had a sponsor/promoter which was a public medical charitable trust. On the basis of statements made by accountant of the sponsor the exemption was denied. Tribunal allowed the exemption. On appeal High Court affirmed the order of the Tribunal.
CIT (E) v. Pacific Medical University (2022) 137 taxmann.com 207 (Raj.)(HC)
Editorial :SLP of Revenue dismissed, CIT (E) v. Pacific Medical University (2022) 286 Taxman 358 (SC)

S. 10 (23C): Educational institution- Association of persons – Registered with charity commissioner - AOP was formed to run and manage an English medium public school-Denial of exemption is not valid [S.2(31)(v), 10(23C(vi) , Form No 56D , Bombay Public Trust Act, 1950]
Held that theAssessee being an AOP of two charitable trusts which are registered with the IT authorities and are regulated by the Charity Commissioner registration for exemption under S. 10(23C)(vi) cannot be denied on the ground that the assessee is an AOP and an unregulated entity. The assessee AOP is running a school and is deriving income only by way of educational fees and interest on fixed deposits which is utilized solely for educational purposes, and there is no distribution of profit between the two members, assessee is an educational institute existing solely for the purpose of education and not for the purposes of profit and therefore, it is entitled for exemption under S. 10(23C)(vi). Directed the CIT(E) to grant exemption . (AY.2018-19)
Sharda Mandir High School v. CIT (E) (2022) 214 DTR 425 / 218 TTJ 551 (Mum)(Trib)

S. 10(23C): Educational institution-Ad-hoc disallowance at 10 percent – Held to be not justified – Van Rent – Contra entry - After Deduction of amount from both sides, turnover of assessee is below Rs. 1 Crore —Entitled to benefit.
Held that the expenses were disallowed on ad hoc basis at 10 per cent. on total expenses without specifying any specific lacuna. Therefore, the Assessing Officer was directed to delete the disallowances. That "van rent" was in contra entry in both sides of income and expenditure accounts. After deduction of the amount from both sides, the turnover of the assessee was below Rs. 1 crore. The assessee was allowed the benefit under section 10(23C) of the Income-tax Act, 1961 (AY. 2015-16)
Baba Farid Public Welfare Society v. ITO (E) (2022) 99 ITR 339 (Amritsar)(Trib)

S. 10 (23C): Educational institution-Audit report submitted before completion of assessment-Registration under section 12AA is not a condition precedent for availing the exemption under section 10(23C)(*v*)-Exemption cannot be denied merely on ground that the assessee has generated surplus income. [S. 10(23C)(v), 11, 12AA]
Assessee-charitable trust was engaged in managing administration and functioning of a Gurudwara. Assessee filed return claiming exemption under section 10(23C)(v).AO denied said claim on ground that assessee-trust generated surplus of 41 per cent of gross receipts which indicate that funds were not utilized for purpose for which trust was formed. He also held that audit report was also not filed within stipulated date. Commissioner (Appeals) held that submission of audit report before competent authorities constituted sufficient compliance and, therefore, there was no other requirement under law to avail exemption under section

10(23C)(v). Held that the funds of trust were managed by member of trustees headed by District Collector and no mala fide could be attributable to Government Authorities in absence of any evidence. Held that Commissioner (Appeals) was right in holding that filing of audit report in prescribed form before completion of assessment proceedings would constitute a sufficient compliance under provisions of Act and, thus, claim could not be denied merely on ground that assessee generated surplus income. Tribunal also held that provisions of section 10(23C)(v) does not prescribe any stipulation, which makes registration under section 12AA as a condition precedent for availing the exemption. (AY. 2014-15)
ACIT v. Nanded SikhgurudwaraSachkhandHazurApchalnagar Sahib. (2022) 196 ITD 508 (Pune) (Trib.)

S. 10 (23C): Educational institution-Application was barred by limitation-No statutory provision to condone delay-Order of rejection was affirmed.[S. 10(23C)(vi)]
Assessee filed applications under section 10(23C)(vi) for ~~a~~ grant of approval as an Educational Institution. Commissioner (E) rejected these applications as they were time-barred and there is no statutory provision nor there is any power to condone the delay after considering reasonable reasons. On appeal, the Tribunal held that a reasonable cause can be taken into cognizance for the condoning delay if such provision is provided in Act while considering any issue for adjudication. Order of CIT(E) rejecting the application was affirmed. (AY. 2016-17, 2017-18, 2018-19)
Bishnupur Public Education Institute. v. CIT (E) (2022) 195 ITD 123/ 95 ITR 95 (SN) (Kol) (Trib.)

S. 10 (23C): Educational institution-Other object clauses of Trust-Denial of exemption is not valid [S.10(23C)(vi)]
Held that exemption cannot be denied merely on the ground that the object clause of the trust deed of the assessee also contained objects other than educational activities. (AY. 2017-18)
Shree Sanskar Tirth Educational and Charitable Trust. v. CIT (E) (2022) 195 ITD 500 (Rajkot) (Trib.)

S. 10 (23C): Educational institution-Deficiency in completeness of information sought-Matter remanded [S. 10(23C)(vi)]

Held that onus on the assessee to submit all required documents with supporting evidence to prove genuineness that society existed solely for education purpose and not for purpose of profit had not been provided.On facts there being deficiency in completeness of information sought, impugned order was to be remanded back to Commissioner (E) for adjudication afresh.
Indira Memorial Public School. v. CIT (2022) 194 ITD 658 (Chd) (Trib.)

S. 10(34) :Dividend-Domestic companies-Tax on distribution of profits-Dividend received by assessee on Liquidation of company-Dividend declared before liquidation and dividend distribution tax paid by company-Not entitled to exemption of dividend income.[S. 2(22), 10(33), 46(2),115O]

Held dismissing the appeal, that for the assessment year 2003-04, the assessee was not entitled to exemption of dividend income in the absence of section 10(33) of the Act (section 10(33) of the Act was omitted by the Finance Act, 2002). Moreover, the contention of the assessee that the payment of Rs. 25 lakhs was in the nature of capital in view of the fact that the company was under liquidation proceedings, and that such distribution was taxable in accordance with section 46(2) of the Act was not tenable, because the dividend was declared before liquidation and dividend distribution tax was paid under section 115-O of the Act by the company (dividend was declared on July 5, 1999 and dividend distribution tax was paid on January 31, 2001. Order of CIT(A) is affirmed.(AY.2003-04)

Thankamma Sebastian (Smt.) v. ITO (2022) 93 ITR 25 (SN)(Bang) (Trib)

S. 10(37) : Capital gains - Agricultural land - Compensation for acquisition of agricultural land is held to be not liable to tax – Agricultural income cannot be assessed as cash credits [S. 2(14)(iii), 10(37)(ii)), 45 , 68 , Gujarat Industrial Development Act, 1962 , S. 16 , Gujarat Municipality Act , 1963 , S. 264A, Constitution of India , Art. 243P(e), 243Q]

Held that compensation received for acquisition of agricultural land in Hazira Land Acquisition is held to be not taxable . Hajira Notified area is not Municipality . Agricultural income cannot be assessed as cash credits **.** (AY. 2007 -08)

Ambaben Jamubhai Patel v .ITO (2022) 219 TTJ 674 / 218 DTR 41 (Surat) (Trib)

S. 10(37) : Capital gains-Agricultural land-With in specified urban limits-Rural agricultural land-Not converted in to non-agricultural-Capital gain is exempt-Income from transfer of agricultural land-Compulsory acquisition-Compensation received on compulsory acquisition of rural agricultural land is not chargeable to tax and compensation received on compulsory acquisition of urban agricultural land is exempt from tax . [S. 2(14)(iii), 45]

Land initially purchased by assessee was a rural agricultural land and was thus was not a capital asset as per provision of section 2(14)(iii) till date of it being diverted into a non-agricultural land, capital gain accruing to assessee till date of diversion of land shall be exempt from tax. Tribunal held that compensation received on compulsory acquisition of rural agricultural land is not chargeable to tax and compensation received on compulsory acquisition of urban agricultural land is exempt from tax as per section 10(37) subject to conditions specified therein. (AY. 2014-15)

Krishna Mohan Choursiya. v. ITO (2022) 192 ITD 214 (Indore) (Trib.)

S. 10(38) : Long term capital gains from equities-Sale of shares-Securities transactions tax was paid-Mere presumptions and suspicion-Exemption cannot be denied [S. 45]

The AO denied the exemption treating the transaction as sham on the ground that the directors of the broker companies,through whom the assessee undertook transactions of sale of shares were banned by SEBI for market manipulation. In the course of appeal proceedings the assessee has provided contract note/ ledger account etc which was matched by the data

furnished by the Stock exchange. On appeal CIT(A) upheld the order of the AO. On appeal the Tribunal held that once it is accepted by the AO in his remand report that all the transactions of the assessee are reflected in the contract notice /ledger account furnished by assessee which are matching with the data furnished by stock exchange the addition was not justified on mere presumptions and suspicion. Relied on Umacharan Shaw and Bros. v. CIT (1959)) 37 ITR 271 (SC)/ Omar Salay Mohamed Sait v. CIT (1959) 37 ITR 151 (SC)(AY. 2012-13)

Mukesh Nanubhai Desai v. ACIT (2022)96 ITR 258 (Surat) (Trib)

S. 10(38) : Long term capital gains from equities-Sale of shares-Taxable loss cannot be set off against income from tax under Chapter III-Short term capital loss arising on sale of shares cannot be set off against long term capital gains from sale of shares which are exempt u/s 10(38)-Revenue was not justified in disallowing assessee's claim for carry forward of loss.

Assessee claimed carry forward of long-term capital loss and short-term capital loss.AO assessed total income at same amount as declared by assessee, but reduced quantum of carried-forward losses. CIT(A) up held the order of the AO.On appeal the Tribunal held that Chapter III prescribes incomes which are not to be included in total Income and from scheme as prescribed in Income-tax Act, it is very much clear that exempted incomes do not enter into computation of total Income and hence such incomes are not available for set-off of any loss.Accordingly short-term capital loss from shares could not have been set off against any tax-exempt income covered under Chapter III and thus, revenue was not justified in disallowing assessee's claim for carry forward of loss, by setting off same against long-term capital gains from shares which was tax-exempt under section 10(38) of the Act. Relied on KishorbhaiBhikhabhai Virani v. ACIT(2014) 367 ITR 261 (Guj)(HC),Raptakos Brett & Co. Ltd., v. Dy. CIT (2015) 69 SOT 383 (Mum)(Trib) (AY. 2016-17)

Sikha Sanjay Sharma (Mrs)v.DCIT (2022) 195 ITD 178 (Ahd)(Trib)

S. 10A : Free trade zone-Set-off losses of STP/SEZ unit against income of non-STP units-Allowed to be set off-Export turnover-Deemed export, reimbursement of expenses, expenses incurred in foreign currency, delayed export proceeds and VAT/GST would form part of export turnover-Corporate office expenses-Allowed on ad hoc percentage of 20 percent and not based on turnover of various undertakings for purpose of deductions under section 10A.[S.80IB, 80IC]

High Court held that assessee was allowed to set-off losses of its STP/SEZ unit against income of non-STP units of assessee.Followed CIT v. Yokogowa India Ltd (2017) 391 ITR 274 (SC). Held that deemed export, reimbursement of expenses, expenses incurred in foreign currency, delayed export proceeds and VAT/GST would form part of export turnover for purpose of computation of deduction under section 10A. Held that expenses of corporate office were to be allowed on ad hoc percentage of 20 percent and not based on turnover of various undertakings for purpose of deductions under section 10A.(AY. 2006-07)

CIT v. Wipro Ltd. (2022) 134 taxmann.com 301 (Karn)(HC)

Editorial : SLP of revenue dismissed; CIT v. Wipro Ltd. (2022) 285 Taxman 274 (SC)

S. 10A : Free trade zone - Loss incurred by eligible unit can be set off against profit of another eligible unit before allowing deduction -Turnover -Telecommunication expenses and expenditure incurred in foreign currency to be excluded from export turnover as well as total turnover

Held that, as decided by the Supreme Court in the assessee's own case for the assessment year 2005-06, the loss incurred by an eligible unit under section 10A could be set off against the profits of another eligible unit. Relied on CIT v. Yokogawa India Ltd (2017) 391 ITR 274 (SC) . Held That, as decided by the Bombay High Court in the assessee's own case for earlier assessment years, the telecommunication expenses of eligible units could be reduced from the export turnover as well as the total turnover of the eligible unit. Relied on CIT v. HCL Technologies Ltd (2018) 404 ITR 719 (SC). Held hat the expenditure incurred in foreign exchange could also be reduced from the total turnover of the eligible units.(AY.2010-11)

Capgemini India Pvt. Ltd. v. Dy. CIT (2022) 99 ITR 506 (Mum)(Trib)

S. 10A: Free trade zone - Export — Telecommunication Charges — To be excluded from both export and total turnover .

The Assessing Officer recomputed the deduction under section 10A by reducing the telecommunication charges from only its export turnover without making a corresponding reduction in its total turnover and made disallowance of deduction claimed under section 10A. But the Dispute Resolution Panel directed the Assessing Officer to exclude the expenses both from export and total turnovers while computing the deduction allowable under section 10A. The Tribunal held that the DRP's directions are in accordance with the precedents. Hence, the assessee's claim was allowed. (AY. 2010-11, 2011-12)

U.L. India Pvt. Ltd. v Dy. CIT (2022)96 ITR 191 (Bang) (Trib)

S.10A: Free trade zone - Disallowance of difference between profit declared by Assessee Arm's Length Profit — Not Justified .

The Tribunal held that the assessing officer had computed the excess deduction under section 10A of the Act based on the arm's length price-based profit of the information technology-enabled services rendered vis-à-vis the assessee's actual profit from such services. The assessee's associated enterprise being a U. K. company, was not chargeable to tax in India. In other words, if the assessee had suo motu offered higher income in its hands, which was albeit deductible under section 10A, without conferring any corresponding benefit to its associated enterprise in terms of higher deduction of expenditure, the disallowance of excessive deduction under section 10A would not be justified. (A.Y. 2009-10)

Dy. CIT v. Romax Solutions Pvt. Ltd. (2022)95 ITR 69 (Pune)(Trib)

S. 10A : Free trade zone – Total turnover - Deductions on freight, telecommunication and Insurance attributable to delivery of computer software to be deducted from total turnover - Expenses on provision of technical services outside India also deductible from total turnover in same proportion as from export turnover.

Held that if the deductions on freight, telecommunication and insurance attributable to the delivery of computer software under section 10A of the Act were allowed only from the export turnover but not from the total turnover then, it would give rise to inadvertent, unlawful, meaningless and illogical result which would cause grave injustice to the assessee which could have never been the intention of the Legislature. When the object of the formula

for computation of the deduction under section 10A was to arrive at the profits from export business, expenses excluded from the export turnover have to be excluded from total turnover also. Otherwise, any other interpretation would make the formula unworkable and absurd. Hence, deduction was to be allowed from the total turnover in the same proportion as well. In the same way, expenses incurred in foreign exchange for providing the technical services outside were to be excluded from the total turnover.(AY.2007-08)
Alcatel Lucent India Ltd. v. Dy. CIT (2022)95 ITR 314 (Delhi) (Trib)

S. 10A : Free trade zone - Transaction between related parties — Restriction of deduction is held to be not justified.[S.80IA(10)]
Held, that the Assessing Officer had not proved that any arrangement existed between the parties which resulted in higher profits. Consequently, the reworking of the profits by the Assessing Officer invoking section 10A read with section 80IA(10) was not justified. The action of the Assessing Officer in restricting the deduction under section 10A was set aside. Therefore, the order of the Commissioner (Appeals) was not justified.(AY.2005-06)
Honeywell Automation India Ltd. v . Dy. CIT (2022)95 ITR 51 (Pune) (Trib)

S. 10A : Free trade zone-Eligible undertaking-Gross total income-After amendment of section 10A by Finance Act 2000, said section became a provision for deduction but stage of deduction would be while computing gross total income of eligible undertaking under Chapter IV of Act and not at stage of computation of total income under Chapter VI of Act.
Assessee-company is engaged in software development and claimed deduction under section 10A for its two units situated in Software Technologies Park.AO reduced losses of one unit against eligible profits of other unit for computing deduction under section 10A. Held that after amendment of section 10A by Finance Act 2000, said section became a provision for deduction but stage of deduction would be while computing gross total income of eligible undertaking under Chapter IV of Act and not at stage of computation of total income under Chapter VI of Act. (AY. 2005-06)
ACIT v. Geometric Software Solutions Co. Ltd. (2022) 196 ITD 466 (Mum) (Trib.)

S. 10A : Free trade zone-Expenditure of telecommunication charges, insurance charges, etc.-Travel expenses incurred in foreign currency-Deductible from both export turnover and total turnover-Loss on account of employee misappropriation-Deduction allowable on enhanced profit
Held that expenditure of telecommunication charges, insurance charges, etc. Travel expenses incurred in foreign currency is Deductible from both export turnover and total turnover. Loss on account of employee misappropriation. Deduction allowable on enhanced profit..(AY.2010-11)
Sandisk India Device Design Centre Pvt. Ltd. v. ITO (2022)93 ITR 569 (Bang) (Trib)

S. 10A : Free trade zone-New unit-The execution of work in a new unit when the agreement of any of its client pre-dates the operational date of the new unit, forms no basis for rejection of the deduction u/s 10A of the Act-Matter remanded-If the forward contracts entered into by the assessee are fully backed by the export then the gain or loss on such forward contracts, would be regarded as business income and the same is deductible under the section, for an eligible unit.[S. 43(5)]
Held that the execution of work in a unit in respect of contract entered with any of its clients should not be a reason to reject the deduction claimed under section 10A of the Act. As regards Unit 2 the Tribunal deemed it fit to restore this issue to the file of the AO, given that

the AO had not examined this issue by considering factual aspects presented before the Tribunal which consisted of-details of seating capacity and other infrastructure facilities pertaining to the units in question. Held that when all the undertaking are eligible for deduction under section 10A then the gain or loss from forward contract is eligible for deduction under section 10A. Thus, the direction to the AO, to grant the benefit of deduction under section 10A of the Act in respect of disallowance of marked-to-market losses. (AY. 2009-10)

Dell International Services India (P.) Ltd v. JCIT (2022) 94 ITR 247 (Bang)(Trib)

S. 10AA : Special Economic Zones-Special Economic Zones-Newly established Units-Export turnover-Telecommunication charges attributable to delivery of computer software outside India could not be excluded from export turnover-Telecommunication expenses and insurance charges, representing payment towards standard delivery and not delivery of software, being not incurred in foreign currency were to be excluded from export turnover. [S. 800HHC, 800HHE]

Court held that telecommunication charges attributable to delivery of computer software outside India could not be excluded from export turnover in view of Explanation 1(i) to section 10AA of the Act.Court also held that Telecommunication expenses and insurance charges, representing payment towards standard delivery and not delivery of software, being not incurred in foreign currency were to be excluded from export turnover under section 10AA.When object of formula in section 10A for computation of deduction is to arrive at profit from export business, expenses excluded from export turnover have to be excluded from total turnover also Therefore telecommunication expenses and insurance charges, representing payment towards standard delivery and not delivery of software, being not incurred in foreign currency were to be excluded from export turnover under section 10AA (AY. 2008-09)

Subex Ltd v. Dy.CIT(2022) 142 taxmann.com 241 (Karn)(HC)

Editorial: SLP of Revenue, dismissed,DCIT v. Subex Ltd (2022) 289 Taxman 6 (SC)

Dr. S. Chandra Shekaran v. CCIT(TDS) (2022)448 ITR 318/ 217 DTR 163/ 328 CTR 497 (Mad) (HC)

Dr. K. Govind Rajan v. CCIT(TDS) (2022)448 ITR 318 / 217 DTR 163/ 328 CTR 497 (Mad) (HC)

S. 10AA : Special Economic Zones-Computation of turnover-Telecommunication expenses not to be excluded from export turnover.

Held that the Tribunal was not right in holding that the telecommunication expenses were to be excluded from export turnover in computing deduction under section 10AA.(AY.2009-10)

Subex Ltd. v. Add. CIT (2022)448 ITR 309 (Karn)(HC)

S. 10AA : Special Economic Zones - Claim made in revised return accompanied by Form No. 56F-Deducction allowable - AO has not proved existence of any arrangement

between the assessee and its AES so as to produce more than ordinary profits-Disallowance was deleted.[S. 10A(5), 10AA(9), 44AB ,80IA(10), 139(1), 139(5), 288(2)]
Held that for the period anterior to the amendment of S. 10A(5) carried out by the Finance Act, 2020, the only requirement was to furnish the audit report in the prescribed form along with the return of income; since the assessee claimed deduction under S . 10AA by filing the revised return under S.. 139(5) and also uploaded the requisite audit report in Form No. 56F along with that, assessee's claim is allowable. Held that theAO has not proved existence of any arrangement between the assessee and its AES so as to produce more than ordinary profits in the hands of the assessee, the amount of deduction under S. 10AA r/w s. 80-IA(10) cannot be reduced simply by comparing the profit margin of the assessee from the transaction with its AES with that earned by the comparables. (AY. 2013-14)

Capgemini Technology Services India Ltd. v. Dy. CIT (2022) 220 TTJ 409 (Pune) (Trib)

S. 10AA : Special Economic Zones - Export turnover – Additional evidence – Not to be restricted to consideration received up to date of filing time of return – Revesal of provision - Matter remanded [S. 10A, 10B]
Issue was remanded back for considering the additiona evidence , computation of turnover and to consider the revesal of entries.(AY.2013-14)
Mindtree Ltd. v. Dy. CIT (2022) 99 ITR 1 (Bang)(Trib)

S.10AA: Special Economic Zones – Computation — Exemption must precede any other adjustment of brought forward losses — Assessee denied full exemption due to system automatically — Matter remanded to Assessing Officer for purpose of limited verification of amount of exemption. [S, 70, 72 , 74, 143(1))]
The Tribunal held that where there is a unit which is eligible for exemption u/s 10AA of the Act, then the income must first be computed for that unit alone by allowing exemption u/s 10AA of the Act, meaning thereby that exemption u/s 10AA of the Act must precede any other adjustment of brought forward losses. In other words, the deduction u/s 10AA of the Act is to be allowed against the profit, and only thereafter the brought forward losses and income from other hands and the provisions for set off and carry forward would be allowed. (AY. 2016-17)
IFGL Refractories Ltd. v. Dy. CIT (2022)95 ITR 287 (Kol)(Trib)

S. 10AA : Special Economic Zones - Section 10AA does not mandate filing of return of income within specified due date as one of condition precedent for claiming exemption under said section - Matter remanded. [S. 80AC, 139(1) , 139(4)]
Allowing the appeal of the assessee the Tribunal held that section 10AA of the I. T. Act has not mandated filing of return of income within the specified due date u/s 139(1) of the I. T. Act as one of the conditions precedent for claiming the deduction. The conditions to be fulfilled in order to claim the exemption are stipulated in sub-section (2) of section 10AA of the I.T.Act. Further, sub-section (4) has stipulated the conditions which ought not to be

violated in order that an undertaking is not disentitled from claiming the exemption under the section. Tribunal further observed that it is not the case of the Revenue for disallowing the claim u/s 10AA of the I.T.Act that the assessee has not fulfilled or violated any of the conditions mentioned in sub-sections (2) and (4) of section 10AA of the I.T.Act. Matter was remanded back to Assessing Officer to examine whether assessee had complied with conditions mandated under section 10AA and correctly computed claim. (AY. 2013-14)
Opto Circuits (India) Ltd. v. ACIT (2022) 219 DTR 177 / 220 TTJ 649 (Bang)(Trib)

S. 10B: Export oriented undertakings-Reconstruction-New unit formed in 1998 fully independent with higher production capacity, located at separate plot-New undertaking-Entitled to exemption.
Held that the new unit was a completely different and independent unit located at a separate plot adjacent to the old unit, and that therefore the assessee's claim that the unit formed in 1998 was a new undertaking was established and that the assessee was entitled to exemption under section 10B of the Income-tax Act, 1961. The High Court affirmed the judgment of the Tribunal. The Supreme Court On a petition for Special Leave to Appeal dismissed the special leave petition, that the judgment of the High Court did not suffer from any error. CIIT v. Indian Aluminium Co Ltd (1977) 108 ITR 367 (SC) (AY. 2002-03 to 2008-09)
CIT v. Sociedade De Fomento Industrial Pvt. Ltd (2022)443 ITR 34 / 211 DTR 305/ 325 CTR 507 / 286 Taxman 221 (SC)
Editorial : Decision in CIT v. Sociedade De Fomento Industrial Pvt. Ltd (No. 1) (2020) 429 ITR 207 (Bom)(HC) affirmed.

S. 10B: Export oriented undertakings-Deduction and not exemption-Set off of losses-Loss from export oriented undertakings-Can be set off against other business income-Payment of management fees-Transfer pricing adjustment-Closing stock addition-Provision for absolute inventory-Valuation of stock on scientific basis-Question of fact.[S. 70, 71, 92C, 260A]
The question before the High Court was " whether on the facts and circumstances of the case and in law, the Income-tax Appellate Tribunal was justified in allowing the losses suffered by newly set up export oriented unit against its other business income " Dismissing the appeal of the Revenue the Court held that the Tribunal was right in allowing set off of the losses suffered by the newly set up export oriented unit against its other business income. As regards other issues such as payment of management fees, transfer pricing adjustment, closing stock addition, provision for absolute inventory valuation of stock on scientific basis. Order of Tribunal is affirmed.Followed Rotork Controls India.P. Ltd v. CIT (2009) 314 ITR 62 (SC), Hindustan Unilever Ltd v. Dy.CIT(2010) 325 ITR 102 (Bom)(HC), CIT v. Galaxy Surfactants Ltd (2012) 343 ITR 108 (Bom)(HC).*(*AY.2005-06)
PCIT v. Sandvik Asia Pvt. Ltd. (2022)449 ITR 312/ 289 Taxman 342 (Bom)(HC)

S. 10B: Export oriented undertakings-Gross total income-Deduction under section 10B is to be excluded first from profits of year,before set off brought forward unabsorbed depreciation pertaining export oriented unit [S. 32(2), 268A]
Held that deductions under section 10B were to be made while computing gross total income of eligible undertaking under Chapter IV of Act and not at stage of computation of total income under Chapter VI of Act and accordingly, deduction under section 10B was to be excluded first from profits of year, before set-off 'brought forward unabsorbed depreciation' pertaining to export oriented unit. Referred PCIT v. Yokogawa India Ltd (2017)) 391 ITR 274 (SC) (AY. 2002-03 to 2005-06)
PCIT v. SKM Egg. Products Export India Ltd. (2022) 139 taxmann.com 134 (Mad)(HC)

Editorial: SLP of Revenue dismissed due to low tax effect, PCIT v. SKM Egg. Products Export India Ltd. (2022) 287 Taxman 289/ 114 CCH 190 (SC)

S. 10B: Export oriented undertakings-Agreement with Central Government-Ministry of Commerce granting hundred percent export oriented unit-Entitle to exemption-Exemption cannot be denied merely on the ground that the assessee has not claimed exemption in return of income.[S. 10A, 139,Industrial (Development & Regulation) Act, 1951 S. 14]

AO denied benefit of exemption under section 10B on ground that assessee was not approved by concerned statutory Board as a hundred per cent export oriented undertaking as required under Explanation to section 10B of the Act. Commissioner (Appeals) allowed appeal. On revenue's appeal, Tribunal referred that an agreement was entered into between assessee and Central Government wherein there was a reference to a resolution passed by Ministry of Commerce granting status of hundred per cent export oriented unit to assessee.Further CBDT had issued a clarification dated 9-3-2009 to effect that power to grant approval under section 14 of Industrial (Development & Regulation) Act, 1951 had been delegated to Development Commissioner and approval granted by Development Commissioner shall be considered valid for purpose of exemption under section 10B. Affirmed the order of CIT(A). On appeal High Court affirmed the order of Tribunal.The assessee had not claimed exemption under section 10A in its return of income, however, Tribunal after examining the factual matrix and pointed out similarities between section 10A and section 10B and after taking note of legal position came to conclusion that assessee was entitled to relief under section 10B and was also entitled for benefit of exemption under section 10A of the Act. Tribunal also held that Revenue cannot take advantage of assessee's mistake in not claiming exemption in return of income, thereby denying exemption. On appeal High Court affirmed the order of Tribunal.(AY. 2007-08, 2008-09)

PCIT v. Wizard Enterprises (P.) Ltd(2022) 286 Taxman 112 / 218 DTR 164 / 328 CTR 849 (Cal)(HC)

S. 10B: Export oriented undertakings - Approval - STPI Scheme and Income -tax Act - Grant of the approval under S. 14 of Industrial Development and Regulations Act, 1951 by the Development Commissioner – Entitle to exemption – Arrangement with associates – Transactions with foreign entities -No loss to revenue – Provision is applicable only to in respect of profit earned from domestic companies – Deletion of addition was affirmed . [S. 10A, 10(B)(7), 80IA(10), Industrial Development and Regulations Act, 1951, S. 14]

Held that the CBDT has issued a clarification dt. 9th March, 2009 as corrected by Corrigendum No. 178, dt. 8th May, 2009, to clarify that the Board of Approval to grant the approval under S. 14 of Industrial Development and Regulations Act, 1951 has been delegated to Development Commissioner and, therefore, the same shall be considered valid for the purpose of exemption under S. 10B of the Act . – Accordingly the approvals issued by STPI Directors having Board of Approvals satisfy the conditions of approval as envisaged under Expln. 2(iv) of S. 10B of the Act . The assessee is entitle to deduction . Therefore, the assessee is entitled for deduction under S. 10B of the Act . Followed , Dy CIT v. Hitech Infosoft (TTA No 1625/Ahd/2016, dt 3rd Oct, 201 and PCIT v Wizard Enterprises (P) Ltd (2022) 218 DTR 164 (Cal) (HC). The Tribunal also held that the provisions of S. 80-IA(8) and 80 (A(10) have application only in respect of domestic transactions involving transfer of goods and services of eligible business to any business carried on by the assessee and vice versa. When the provisions of a particular section of the same statute are incorporated in the

provisions of another section, all that one has to do is to read the provisions plainly and apply the interpretation, if any ambiguity exists The provisions of S. 80-1A(8) and 80-IA(10) have application only in respect of domestic transactions and the language of the provisions of S. 80 IA(8) and 80-IA(10) is very clear and offer no ambiguity as to scope of operating of said provisions, therefore, the provisions of S. 10B(7) have application only in respect of domestic transactions. On the facts there is no domestic transactions attracting the provisions of S. 80 IA(8) and 80 (A(10) The AO has not brought on record any material to demonstrate that the assessee-company has indulged in an arrangement with its foreign AE to produce the assessee more profits than the profit the assessee might have ordinarily earned out of such business, and the AO has not indicated any material evidence to disclose any such arrangement between the assessee company and its AE Therefore, in the absence of any material demonstrating the existence of any arrangement between the assessee and its foreign AE to produce the assessee more profits than ordinarily what profit the assessee might have expected to arise out of such business, resort to provisions of S.10B(7) cannot be made to restrict the amount of deduction under S 10B and also provisions of S . 10B(7) read with section 80IA have no application in respect of international transactions entered into between the assessee and its foreign AE . Order of CIT(A) is affirmed. (AY. 2010-11, 2011-12)
ACIT v. HSBC Software Development (India) Ltd. (2022) 219 TTJ 951/ 218 DTR 257 (Pune)(Trib)

S. 10B: Export oriented undertakings-Deduction allowable on the gross total income without setting off the carried forward business loss and unabsorbed depreciation of non-eligible unit-Matter remanded [S. 32(2), 72]
Held that deduction allowable on the gross total income without setting off the carried forward business loss and unabsorbed depreciation of non-eligible unit. Matter remanded.(ITA.Nos 1251 to 1254, 1407, 1408 / Chny/ dt. 25-5-2022)(AY. 2003-04 to 2006-07, 2007-08, 2008-09)
International Agricultural Processing (P) Ltd v.ACIT(2022) The Chamber's Journal-July-P. 125 (Chennai)(Trib)

S. 11 : Property held for charitable purposes-Method of accounting-Tribunal calling for information and affidavit filed in response by assessee-Affidavit not referred to by Tribunal or by High Court-Orders of Tribunal and High Court set aside and matters remitted to Tribunal for consideration afresh. [S. 254(1), 256(2), 260A]

Allowing the appeals the Court held that after the matter was remanded to the Tribunal, it called for information in terms of which direction, affidavit was filed on behalf of the assessee and a note was submitted on behalf of the Department. The affidavit made the position clear and in the entirety of the process including framing of the second question, the challenge with regard to the method of accounting was quite apparent. The submission advanced on behalf of the assessee was therefore required to be dealt with on the merits. However, neither the affidavit nor the note was referred to by the Tribunal. The conclusions arrived at by the Tribunal were thus not consistent with the order of remand passed by the court or with the direction issued by the Tribunal itself seeking certain information. The High Court also erred in affirming the view taken by the Tribunal. Therefore, the orders passed by the Tribunal and the High Court were to be set aside and the matter remitted to the Tribunal to consider the matter afresh in the light of the order dated April 24, 1996 passed by the court and in keeping with the direction issued by the Tribunal in its order dated May 5, 2008.(AY. 1985-86, 1989-90 and 1993-94)

PrajatantraPrachar Samity v.CIT(2022)443 ITR 15 / 213 DTR 440/ 326 CTR 569/287 Taxman 667(SC)

S. 11 : Property held for charitable purposes-Running educational institution to students and staff-Hostels for students-Incidental to providing education as per object of trust-Charitable purpose-Entitle to exemption.[S. 2(15)]

Assessee earned gross receipt of Rs. 61.63 crores on account of educational activity and assessee was also running hostels for students as per UGC Guidelines which was an ancillary activity.Court held that absence of any evidence to show that hostel facilities were provided to anybody other than students and staff of trust, hostel facilities provided by educational institution shall be construed to be incidental to providing education as per object of trust and hence come under charitable purpose.

CIT v. Durga Charitable Society. (2022)289 Taxman 706 (All)(HC)

S. 11 : Property held for charitable purposes-Grant-in-aid-One time grant-in-aid from Government of India with a specific purpose of upgradation and strengthening of institutions-Not assessable as Revenue receipts [S. 2(24)(iia), 2(24)(xviii), 10(23C)(iiiab) 12, 12AA 13, Himachal Pradesh Nursing Registration Council Act, 1977]

The assessee an institution created by Himachal Pradesh Nursing Registration Council Act, 1977 received one time grant-in-aid from Government of India with a specific purpose of upgradation and strengthening of institutions. The AO assessed the grant in aide as income and denied exemption u/s 12AA of the Act. Order of the AO was affirmed by the Tribunal On appeal the Court held that the amount received by assessee could not be termed to be revenue receipt and the assessment order was set aside. (AY. 2011-12)

H.P. Nursing Registration Council v. PCIT (2022) 288 Taxman 275 / 220 DTR 129/ 329 CTR 737 (HP) (HC)

S. 11 : Property held for charitable purposes-Construction activities under State PWD department-2.5 per cent supervision charges-Not entitle to exemption [S. 2(15) 12A]

Assessee-society was registered under section 12A with main objective to take up construction work of any nature to establish a chain of retail outlets. It undertook construction activities under State PWD department in lieu of 2.5 per cent supervision charges and accordingly claimed certain amount as applied for charitable purposes.AO held that construction work was an activity of trade, commerce or business for consideration and assessee could not claim status under section 12A since activities carried on by it did not fall within meaning of charitable purpose warranting exemption from income tax. Order was affirmed by Tribunal. On appeal High Court held that where assessee executed construction work for benefit of Government and received certain amount from Government for same, purpose of such construction work could not be accepted as an activity coming within meaning of advancement of other object of general public utility.-It further held that since assessee was involved in carrying on of any activity in nature of trade, commerce or business, proviso to section 2(15) would be attracted and assessee would not be entitled to benefit under section 11 of the Act.(AY. 2009-10, 2013-14)

Nirmithi Kendra v. Dy. CIT (E)) (2022) 141 taxmann.com 495 (Ker)(HC)

Editorial : Notice issued in SLP filed by the assessee, Nirmithi Kendra v. Dy. CIT (E)) (2022) 288 Taxman 663 (SC)

S. 11 : Property held for charitable purposes--Activities charitable in nature-Remanding matter-No substantial question of law [S. 2(15), 12AA, 260A]

Dismissing the appeal of the Revenue the Court held that the Tribunal had remanded the matter to the AO to examine the activity of the assessee and if it were found to be inconsonance with the objects, allow the benefit of exemption under section 11. Thus, the Tribunal has remanded the matter to the AO to examine the activities of the assessee for allowing benefit of exemption under section 11 of the Act. The AO had also been directed to adjudicate the issue of transfer of fund to infrastructure development fund in terms of the ratio laid down by co-ordinate benches of the Tribunal in the cases of Saharanpur Development Authority and Khurja Development Authority. No substantial question of law was involved in the order of the Tribunal. (AY.2012-13)

CIT. v. Ghaziabad Development Authority (2022)448 ITR 342 (All)(HC)
CIT v. Aligarh Development Authority (2022)448 ITR 342 (All) (HC)
CIT v. Haridwar Development Authority (2022)448 ITR 342 (All) (HC)

S. 11 : Property held for charitable purposes-Object improve public transport system and to assist its members-Charitable object entitle to exemption-Order of Tribunal is affirmed [S. 2(15),10(23C)(vi),12A,260A]

Dismissing the appeal of the Revenue the Court held that main object was to improve the public transport system and to assist its member State transport undertakings by providing automobile parts at the most economical and competitive rates so that the members could run their passenger buses at economical cost. The first proviso to section 2(15) of the Income-tax Act, 1961 does not exclude entities which are essentially for charitable purpose but conduct some activities for a consideration or a fee. The object of introducing the first proviso is to exclude organisations which are carrying on regular business with profit motive.(AY.2009-10)

CIT (E) v. Association of State Road Transport Undertakings (2022)447 ITR 95 (Delhi)(HC)

S. 11 : Property held for charitable purposes-Rule of consistency-No change in activities-Supervision or monitoring of activities by donor not sufficient to hold that any profit motive is involved-Grant of exemption is valid.[S. 2(15)]

Dismissing the appeal the Court held that the Department could not controvert the fact that the assessee had not charged any fee from clients except the cost of the project actually incurred. Even in the sanction letter of grant to the assessee, there was mention of supervision or monitoring of activities by the donor, but that in itself was not sufficient to hold that any profit motive was involved. (AY.2011-12)

CIT v. Professional Assistance for Development Action (2022) 447 ITR 103 (Delhi)(HC)

S. 11 : Property held for charitable purposes-Corpus donation-When the Assessee-trust has received donations for specific purposes with specific directions by donors along with signatures of such donors, then such receipts are to be treated towards corpus donations. [S. 12]

Dismissing the appeal of the Revenue, the High Court held that it can be seen that the CIT(A) and the Tribunal after detailed examinations had come to the conclusion that the Assessee-trust was maintaining separate receipts for corpus donations and for the donations received for general purposes. The receipts maintained for corpus donations shows the directions issued by the donors for the use of the fund for specific purposes. Such receipts also contain signatures of the donors. It was therefore concluded that such donations cannot be said to be not used for specific directions of the donor towards corpus funds and accordingly such corpus donations cannot be treated as revenue receipts. In view of such facts, we find no error in the views of CIT (Appeals) and Tribunal. No question of law arises.. (AY 2016-17)

CIT.v. Shri Jain ShwetamberNakodaParshwanth Tirth (2022) 211 DTR 310 / 325 CTR 550 (Raj) (HC)

S. 11 : Property held for charitable purposes-Voluntary contributions towards corpus fund used for purchase of land-Allowable as application of income [S.11(1)((d)]

The Commissioner (Appeals) set aside the assessment order treating Rs. 19 crores as additional income of the assessee on the ground that exemption on corpus donation was allowable for purchase of land, as it was a purchase of capital asset. The Tribunal affirmed the order of the Commissioner (Appeals) allowing utilisation of corpus fund of Rs. 19 crores as application of income under section 11(1)(d) of the Income-tax Act, 1961. On appeal High Court affirmed the order of the Tribunal.(AY. 2010-11)

CIT(E) v. Om Prakash Jindal Gramin Jan Kalyan Sansthan (2022) 444 ITR 498/287 Taxman 303 (Delhi)(HC)

S. 11 : Property held for charitable purposes-Education-Dissemination of knowledge through Museum or Science Parks constitutes education-Entitled to exemption.[S. 2(15),Companies Act, 1956, S. 25]

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Held, that the assessee had disseminated knowledge in the process of establishing the facilities for the RBI and the Surat Municipal Corporation. The assessee was a not-for-profit organisation but public utility company and the activities of the company for which it had been established would undoubtedly show that the company by establishing knowledge parks, engaged in imparting education and also undertook advancement of other aspects of general public utility to fall within the definition of charitable purpose as defined under section 2(15). The term education occurring of section 2(15) pf the Income-tax Act 1961, cannot be restricted to formal school or college education The assessee was entitled to exemption under section 11.(AY. 2013-14 to 2015-16)

Creative Museum Designers v. ITO(E) (2022) 443 ITR 173 / 211 DTR 361/ 326 CTR 122 (Cal)(HC)

S. 11 : Property held for charitable purposes-Trust not registered-Corpus fund in form of voluntary contributions made with specific direction-Liable to tax as income-Equity and taxation cannot co-exist [S. 2(24)(iia)) 11(1)(d),12A, 12AA, 56 (2)(v)]

The amendment brought in section 12A by the Finance Act, 2014, with effect from October 1, 2014 by way of insertion of first proviso to section 12A(2) is significant to establish the need for registration of a trust to claim exemption under section 11. Registration of the trust is mandatory. The intention of the amendment is to confer the benefits of exemption under

section 11 on genuine trusts which are registered under section 12AA. The conditions laid down under sections 11 and 12 shall apply even to trusts, which are not registered under section 12AA.

On the questions whether the corpus donations in the form of voluntary contributions made with a specific direction that they would form part of the corpus of the trust were exempted under section 11(1)(d) in the absence of registration of the trust under section 12AA. Dismissing the appeals the Court held that the contributions towards the corpus fund with specific directions could be treated as income of the assessee under section 2(24)(iia) since the assessee was not a registered charitable trust under section 12AA though the assessee did not claim exemption under section 11. Donations to the non-registered assessee could be treated as income under section 56(2)(v).(AY.2007-08, 2008-09, 2009-10)

Rasipuram Rotary Club Trust v. ITO (2022)442 ITR 185 (Mad) (HC)

Rasipuram KanndaSainigarSamugaPradama Sangam Educational Trust v. ITO (2022)442 ITR 185 (Mad) (HC)

S. 11 : Property held for charitable purposes-Imparting education-Surplus in educational activities-Alleged excess remuneration to trustee employees-Revenue has no power to interfere-Exemption cannot be denied [S. 2(15), 12A, 13]

The assessee-trust is running various institutions in Bangalore offering degrees and training in various academic courses and was granted registration under section 12A. The AO held that the assessee had violated the provisions of section 13(1)(c) of the Act and therefore, the assessee was not entitled to claim exemption under sections 11, 12 and 13 of the Act. The two trustees were being paid remuneration or salary not in proportionate to the pay scales of a professor and administrative officer respectively. The exemption was denied. The Commissioner (Appeals) and the Tribunal held that the assessee was entitled to exemption. On appeal to the High Court dismissing the appeal the Court held that the AO merely on surmises and conjectures had come to the conclusion that the salary and remuneration paid to the two trustees was highly excessive and not proportionate to the services rendered by them. The Department cannot regulate the management of the assessee-trust. Indeed, the salary or remuneration paid to the trustees were duly accounted and reflected in their returns as income. Merely on imagination, exemption under section 11 of the Act could not be denied.(AY.2009-10, 2010-11)

CIT (E) v.Krupanidhi Education Trust (2022)441 ITR 154 (Karn) (HC)

Editorial : Order in Krupanidhi Education Trust v. DIT (2013) 21 ITR 373 (Bang)(Trib) is affirmed.

S. 11 : Property held for charitable purposes-Charitable objects-Membership and connectivity charges incidental to main object-Entitled to exemption [S. 2(15), 12A]

Dismissing the appeal of the revenue the Court held that nature of services provided by assessee were of general public utility and that services provided were towards membership and connectivity charges, incidental to main objects of assessee. Tribunal was justified in allowing the exemption..(AY. 2009-10)

CIT(E) v. National Internet Exchange of India (2021) 133 taxmann.com 376 (Delhi)(HC)

Editorial :SLP is granted to the revenue, CIT(E) v. National Internet Exchange of India (2022) 284 Taxman 524(SC)

S. 11 :Property held for charitable purposes –Expenses incurred in earlier years-Adjusted to income of subsequent year-Income to be determined on the basis of commercial principle-To be considered as application of income [S. 10(34), 11(1)(a), 11(1)(d))]

Dismissing the appeal of the Revenue the Court held that the income derived from the Trust must be determined on the basis of commercial principles accordingly where expenses for charitable and religious purposes had been incurred in earlier year and said expenses were adjusted against income of a subsequent year, income of that year can be said to have been applied for charitable and religious purposes in year in which expenses had been adjusted as application of income. Followed CIT v. Shri Plot Swetamber Murti Pujak Jain Mandal (1995) 211 ITR 293 (Guj)(HC)

CIT(E) v. KantilalJaikishandas Choksi Charitable Trust (2021) 133 Taxman.com 217 (Guj) (HC)

Editorial :SLP of revenue is dismissed, CIT(E) v. KantilalJaikishandas Choksi Charitable Trust (2022) 284 Taxman 445 (SC).

Expl.5 to Section 11(1) inserted with effect from 1.04.2022

S. 11 : Property held for charitable purposes – Computation of capital gains-Assessment pending for both years-Expenses related to GOLAK donation and interest-To be calculated after taking consideration of section 11 read with section 12A of the Act- Computation of capital gains- Acquisition of property by state government- Land purchased before 1-4-1981- Base index rate from 1-4-1981- Valuation done by state government as on 1-4-1981- Report of government valuer acceptable- Deemed registration- Entitled to claim exemption . [S. 12A , 12AA, 45]

Held that the assessments for both years were pending during the time of approval or deemed approval. The expenses related to GOLAK donation and interest should be calculated taking consideration of section 11 read with section 12A of the Act. Tribunal also held that land was purchased before April 1, 1981. The base rate of index was started from April 1, 1981 as per the Act. The valuation of the property should not be the same on the date of acquisition beyond April 1, 1981 and on the date April 1, 1981. So, the report drawn by the

Government Valuer was very much accepted. Where the assessee-trust, engaged in social and religious activities, was denied exemption under section 11 on the ground of non-registration under section 12A , during the pendency of the appeal filed by the assessee before the Commissioner (Appeals) the assessee obtained registration under section 12A , and the assessee's case would be covered under deemed registration and would be entitled to claim exemption under section 11.(AY.2014-15, 2015-16)

Dera Baba Bhai Gurdas Ji Udasin Trust (Regd) v. ITO (2022)98 ITR 180 (Amritsar) (Trib)

S. 11 : Property held for charitable purposes - Receipt from cultural hall-Amount was spent on the objects of Trust , medical education, relief to poor – Denial of exemption is not valid. [S. 2(15), 12AA]

Held that the assessee has the objects of 'advancement of any other object of general public utility' in its trust-deed, but none of such objects was actually pursued during the year under consideration. The objects and activities of the trust are germane at the time of grant of registration u/s 12AA of the Act, what becomes relevant for consideration at the time of assessment is to see which of the objects, having charitable purpose, were actually pursued only the objects as classified in categories (a) to (c). viz., Medical Relief to the poor patients, Education to the deserving students and Relief to the needy sections of the society and hence shied away from taking up any of the objects in category (d), viz., advancement of any other object of general public utility. Once this is the position, it becomes explicitly clear that the proviso to section 2(15), which attracts only when objects of the category (d) above are pursued, did not trigger in the instant case. The sequitur is that the assessee is entitled to exemption. The AO did not dispute the fulfillment of any other requirements for claiming exemption u/s 11 of the Act. Accordingly the Assessing Officer was directed to allow the exemption under section 11 of the Act . (AY. 2010 -11)

Oswal Bandu Samaj v. ITO (2022) 215 DTR 374 (Pune)(Trib)

S. 11 : Property held for charitable purposes -Returnable interest free loans -Permission from charity commissioner – No loan was taken – No violation –Self help loan given to members - Details verified in the remand proceedings – Deletion of addition is held to be justified – Trust is not for particular religion or community- No violation –Entitle to exemption. [S. 12A, 13(1)(c), 13(2), 69A, 69B, 131, 145, Bombay Public Trust Act, 1950 , S. 36A(3)]

Held that the Assessing Officer has accepted in the remand report that no loan was taken by the assessee-trust during the relevant year and no property of the trust has been utilized for the advantage of the trustees.. Therefore it cannot be held that the assessee has violated the provisions of S. 36A the BPT Act. CIT(A) was justified in allowing the exemption . Held that the amounts deposits in the bank accounts of the assessee trust were the contribution made by the members of the trust for its self help activities which has been confirmed by the contributors, and the AO having verified all the entries in the books of accounts relating to the bank accounts, the addition under s. 69A is not sustainable; assessee having given the details of self-help loans given to its members which are returnable without interest, addition under S 69B is also not sustainable

Held that the trust was not created for the benefit of any particular religious community and that its membership was open to public at large irrespective of any caste etc., provisions of s. 13(1)(b) are not attracted. Held that the activity of the assessee-trust providing self-help loans without charging interest to its trustee on the same terms and conditions as it was given to

any other member of the society is not hit by the provisions of S. 13(1)(c) read with 13.(2) exemption under S. 11 cannot be denied.(AY. 2012 -13)
Dy. CIT (E) v. Lohar Chawl Dawoodi Bohra Merchants Association (2022) 214 DTR 405 / 217 TTJ 393 (Mum)(Trib)

S. 11 : Property held for charitable purposes – Rent paid to specified persons – Fair market rents - Not made any excessive payments – Denial of exemption is not valid [S. 13(1)(c), 13(3)]
Held that the rent paid by the assessee trust to its trustees and their relatives for the school complexes cannot be said to be excessive by comparing the same with municipal valuation. When the said rents are less than the fair market rents paid by various governmental and commercial organizations for the buildings occupied by them, computer rent paid by the assessee trust per student per month being less than the rate approved by the State Government and the rates charged by other educational institutions, it is not a case of passing undue benefits to specified persons and, therefore, denial of exemption under S. 11 is not justified. (AY. 2010-11, 2011 -12)
Dy. CIT (E) v. Gyanganga Education Society (2022) 219 TTJ 1 (UO) (Rajkot)(Trib)

S. 11 : Property held for charitable purposes -Registration does not automatically entitle to exemption- Objects not mentioning running of Kalyana Mandapams or letting out working women's Hostel or construction and letting out of building — Form No 10 for accumulation of income was not filed - Not entitled to exemption. [S. 2(15), 12A, 12AA].
Allowing the appeal of the Revenue the Tribunal held that registration under section 12A of the Income-tax Act, 1961 does not automatically entitle the assessee for claiming exemption under section 11 of the Act. On the facts the assessee had not placed any material to show that it was running the kalyana mandapams for charitable purposes. Nowhere in the objects were running of kalyana mandapams or letting out working women's hostel mentioned nor was construction and letting out of building an object of the assessee-trust. The assessee had not filed form 10 for the assessment year.The assessee had not carried any charitable activities in accordance with the objects. The Commissioner (Appeals), without examining the objects and activities carried on by the assessee, had simply allowed the appeal of the assessee. The assessee had not proved that it had carried on charitable activities and that the business activities were incidental to the charitable activity. (AY.2011-12)
Dy. CIT (E) v. Willingdon Charitable Trust (2022) 99 ITR 56 (SN) (Chennai) (Trib.)

S. 11 : Property held for charitable purposes - Method of accounting — Change of method — Hybrid system of accounting permissible - Denial of exemption is not valid. [S. 11(4A) 12, 12A, 13, 145]
Allowing the appeal the Tribunal held that the issue of applicability of section 11(4A) was already decided by the jurisdictional High Court in the assessee's own case in favour of the assessee. When the Department itself had expressed its inability to verify the documents, as directed to it by the Tribunal, either on account of voluminousness of the documents or for any other reason whatsoever, the assessee's contention that, being a charitable trust, its income was taxable under sections 11, 12 and 13 and, therefore, section 145 was not applicable, could not be rebutted by the Revenue. Hence, the assessee could not be kept in abeyance from getting justice which it deserved. High Court's remanding of the matter regarding the assessee's entitlement to exemption under section 11, which was denied on account of change in accounting practice, was also decided in favour of the assessee. (AY. 1985-86, 1989-90, 1993-94)

Prajatantra Prachar Samity v. ACIT (2022) 99 ITR 719 / 218 TTJ 499/ 215 DTR 1 (Cuttack)(Trib.)

S. 11 : Property held for charitable purposes -Grants in aid received from Government — Grants sanctioned for participation in specific events held abroad-Separate account for projects to be maintained Expenses on specialised fairs and buyers seller meet abroad not to be disallowed. [S. 11(1)(c)]

Held that the assessee had utilised the funds in accordance with the terms and conditions of the grant and the grants were not to be utilised for any other purpose than for which issued and also that the execution of the project was not be entrusted to any other organization. Therefore, it was evident that the assessee was not free to use the funds voluntarily as per its own whims and fancies and they had to be spent according to the terms and conditions of the grant. There was no legal infirmity or error in the order of the Commissioner (Appeals) in deleting the addition.(AY.2012-13 to 2014-15)

ITO(E) v. Sports Goods Export Promotion Council (2022) 99 ITR 41 (SN) (Delhi) (Trib.)

S. 11 : Property held for charitable purposes - Once Department accepts that Assessee was charitable society claim to exemption could not be denied merely because the assessee has made in revised return — Depreciation – Not a double benefit- Taxes paid out of current year's income – Allowable as application of income [S.2(15), 11(1)(a) , 11(2), 12A, 32, 139(5)]

Held that Commissioner (Appeals) directing the Assessing Officer to re-compute income giving benefit of exemption with consequential benefit is held to be proper . Once Department accepts that Assessee was charitable society claim to exemption could not be denied merely because the assessee has made in revised return .Depreciation is not a double benefit. Taxes paid out of current year's income is allowable as application of income . *(* AY.2012-13)

ACIT v. Software Technology Parks Of India (2022)100 ITR 77 (SN)(Delhi) (Trib)

S. 11 : Property held for charitable purposes – Deemed university under University Grants Commission- Consultation fees received – Matter remanded .[S. 2(15) , 12A, 80G]

For the earlier years the matter was remanded to the Assessing Officer . for the decision in the light of the University Grants Commission and All India Council for Technical Education notification and in accordance with law . Following the earlier year the matter was remanded to the Assessing Officer . (AY. 2013 -14 to 2017 -18)

Institute of Chemical Technology v. NFAC (2022) 100 ITR 61 (SN)(Mum)(Trib)

S. 11 : Property held for charitable purposes - Once Department accepts that Assessee was charitable society claim to exemption could not be denied merely because the assessee has made in revised return — Depreciation – Not a double benefit- Taxes paid out of current year's income – Allowable as application of income [S.2(15), 11(1)(a) , 11(2), 12A, 32, 139(5)]

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Institute of Chemical Technology v. NFAC (2022) 100 ITR 61 (SN) (Mum)(Trib)

S. 11 : Property held for charitable purposes - Corporate Social Responsibility – Amount actually spent during financial year and balance utilised in next financial year – Entitle to benefit in respect of amount utilised -Matter remanded. [S. 11(2)]

Assessee, a charitable trust, in financial year 2010-11 (assessment year 2011-12) received certain amount from 'E' company under corporate social responsibility (CSR) initiative for specific purposes of promotion of health/education and livelihood generation including skill development for local community towards their welfare . Out of amount so received under CSR, certain amount was actually spent by assessee during financial year 2010-11 for purposes assigned in respect of such receipt and balance amount was utilized in immediately next financial year 2011-12 and claimed deduction of same on plea that it had complied with provisions of section 11(1) read with Explanation 1(b) thereto towards utilization of CSR money received - Assessing Officer denied deduction and treated such balance amount as assessee's income for assessment year 2011-12 . Tribunal held that law permitted availability of deduction under section 11(1) where assessee had successfully demonstrated application of income in immediately subsequent financial year . Issue was restored back to file of Assessing Officer to ascertain actual utilization of donation/income received from 'E' for charitable purposes in immediately next financial year 2011-12 in terms with Explanation 1(b) to section 11(1). Delay in filing the intimation would not be viewed adversely . Matter remanded. (AY. 2011-12)

Jai Johar Sewa Sansthan Kangoli v. Dy. CIT (2021) 130 taxmann.com 519 / (2022) 218 TTJ 4 (UO)(Raipur) (Trib)

S. 11 : Property held for charitable purposes – Exemption of income from property - Sub-section (7) inserted in section 11 vide Finance (No.2) Act, 2014, providing that benefits of exemption provided in section 10 shall not be available to any Trust/Institution registered and claiming benefit of section 11 was brought with effect from 1-4-2015, therefore, is only applicable to assessment year 2015-16 and onwards [S. 10(34) , 11(7)]

Held that sub-section (7) inserted in section 11 vide Finance (No.2) Act, 2014, whereby it has been provided that benefits of exemption provided in section 10 shall not be available to any trust/institution registered and claiming benefit of section 11 was brought with effect from 1-4-2015, therefore, is only applicable to assessment year 2015-16 and onwards . Therefore, even though assessee's entire income derived from property held under trust was governed by provision of section 11, assessee could not be denied benefit of exemption under section 10(34) in respect of dividend income received by it during assessment years 2011-12 to 2014-15 of the Act. (AY. 2011-12 to 2014 -15)

ACIT v. Navajibhai Ratan Trust (2022) 213 DTR 25 / 217 TTJ 137 / 140 taxmann.com 157 (Mum)(Trib)

S. 11 : Property held for charitable purposes - Depreciation — Assets cost allowed as application of income- Amended provision of Section 11(6) prospective in nature - Applicable for AY. 2015-16 and subsequent years. [S. 11(6)]

The Assessing Officer denied the depreciation on assets on the ground that the entire cost of the assets had on a previous occasion been claimed and allowed as application of income in the hands of the assessee, and the Commissioner (Appeals) affirmed .On appeal thee Tribunal held that the assessee was entitled to depreciation on assets where the full value of assets was on a previous occasion claimed as the application of income. (AY. 2013-14, 2014-15)

Miki Memorial Trust v. ACIT (2022)96 ITR 7 (SN) (Raipur) (Trib)

S. 11 : Property held for charitable purposes - Charitable activities- Providing free note books, running blood donation camps, conducting free coaching classes for poor students for appearing in competitive exams, providing free education, hostel rooms- Entitle to registration. [S. 12, 13, 80G]

The Tribunal held that the objects and purposes of the assessee were both charitable and religious, and the assessee did not exist exclusively for the benefit of a particular religious community and, thus, would not fall as an institution existing solely for religious purposes. In that view of the matter, the registration was to be allowed treating the assessee as existing for a "charitable purpose".(AY. 2018-19)

Channamallikarjuna Trust Committee Gangavathi Sri Mallikarjuna Mutta v. CIT (E) (2022)96 ITR 14 (SN) (Bang)(Trib)

S. 11 : Property held for charitable purposes - Accumulation of income —Return filed showing name of Audit firm and date of audit of accounts and report furnished with return — Not justified in denying exemption [12A(1)(b), Form no 10B]

Held that column M2 of the return of income filed by the assessee showed that the assessee had got its accounts audited by the audit firm AKG on June 5, 2017 and the report was furnished along with the return of income. Since the assessee had got its accounts audited before the due date and had undisputedly filed it before the completion of the assessment. Denial of exemption is not justified . *(* AY.2017-18)

Ram Sharan Khajani Devi Memorial Charitable Society v. ITO (2022)95 ITR 57 (SMC) (SN) (Delhi) (Trib)

S. 11 : Property held for charitable purposes - Accumulation of income — Form 10 filed before time prescribed for filing return — Entitled to exemption .[S.11(2),143(1)), 154 , R.17]

Held that when the assessee had submitted form 10 within time in compliance with rule 17 , the Assessing Officer had erred in denying the benefits claimed by the assessee under section 11(2) of the Act. At the same time, the Commissioner (Appeals) had erred in dismissing the appeal filed by the assessee challenging the order under section 154 of the Act passed by the Assessing Officer. For the earlier years the Assessing Officer allowed such rectification application. In these circumstances, the authorities were required to follow the rule of consistency instead of generating unnecessary litigation. The Assessing Officer was to rectify the order allowing the claim admissible to the assessee under section 11(2) of the Act after due verification of the facts claimed by the assessee.(AY.2015-16)

Sanskruti Vistarak Sangh v. Dy. CIT (2022)95 ITR 29 (SN)(Mum) (Trib)

S. 11 : Property held for charitable purposes - Exemption hospital building leased out to private party – Land & Building constructed leased out to private party for upfront consideration and annual concession fee – Not entitled to exemption . [S. 12A]

The Tribunal that since its inception assessee has been indulging only in construction activity. As per the agreement, the land and building constructed by the assessee for the purpose of running hospital has been leased out to a private party, for an upfront consideration and an annual concession fee stipulated therein. Leasing out of medical structure for 99 years tantamount virtually to selling the property to the private party. Hence, assessee cannot be said to be carrying out its stated charitable activity of running the medical college and hospital. There is nothing in the concessionaire agreement demonstrating that assessee exercised right over the leased medical infrastructure. There is no merit in the claim of the assessee that it was indulging in charitable activities by way of funding medical projects in Government hospitals as it was nothing but a commercial transaction by the assessee-society. Assessee was only earning income by non-charitable activities, i.e., investments made by it in FDRs or other medical institutions. Therefore, it is not entitled to exemption under S. 11. (AY. 2015-16)

Punjab Institute of Medical Sciences v. CIT (E) (2022) 217 TTJ 610 / 216 DTR 1 (Chd)(Trib)

S. 11 : Property held for charitable purposes - Foreign travel expenditure for trustee – Advancing interest bearing loan to trustee - Denial of exemption is justified . [S. 13(1)(c)], 13(2)]

When the Assessee Trust was unable to substantiate its contention that foreign travelling expenditure incurred by the trust for one of its trustees- was for the purpose of securing education exchange programme from a foreign university; such expenditure (in absence of any positive evidence) was held to be volatile of section 13(1)(c); accordingly disallowable. When the Assessee Trust had advanced loan to its trustee on which interest was charged; however, the same was never actually recovered; it was held that in absence of any evidence to support the loan transaction with the interested person; the said loan transaction was hit by provision of section 13(1)(c); accordingly added to income of the AssesseeTrust. Similarly, when the Assessee Trust had collected 'outside training fees' in cash; however as the Assessee Trust failed to provide any plausible explanation and sustainable evidence which substantiates that such fees was ultimately utilized only towards the charitable objects of the Assessee Trust; exemption under section 11 was rightly denied. Even though donation made by one trust to another trust having similar charitable objects is considered as application of income for charitable purpose; however, as the Assessee Trust was unable to substantiate the facts about such application; denial of exemption under section 11 was held to be justified. (AY. 2009 10, , 2011 -12)

Nabadigant Education Trust v. ITO (2022) 217 DTR 81 (Cuttack)(Trib)

S. 11 : Property held for charitable purposes-Search and seizure-Addition on protective basis-No incriminating material was found-More than 85 per cent of receipts of trust were applied for objects of trust-Denial of exemption is not valid [S. 12A, 13,132, 153C]

Assessee-trust is registered under section 12A and claimed exemption under section 11. A search was conducted at premises of VasanthraoGhonge a trustee of assessee, pursuant to which notice under section 153C was issued to assessee.AO denied exemption on ground that assessee could not claim exemption in name of trust and further determined income of assessee by making additions with respect to income found during search in hands of assessee-trust on protective basis. CIT(A) deleted protective additions Held that from financial statement that expenditure incurred by assessee trust was normal expenditure

incurred on objects of trust and no incriminating material was found in search carried out at premises of VasanthraoGhonge,pursuant to which notice under section 153C was issued. Furthermore, fixed assets of trust were not found to be used for benefit of VasanthraoGhonge. There being application of income at more than 85 per cent of receipts of trust on objects of trust, income of trust was to be determined at hands of assessee itself and income would be determined as nil. Denial of exemption is not valid. (AY. 2007-08, 2008-09, 2011-12)

Bhaktvastal Sadguru Yogiraj VasantraoGopalraoGhonge Maharaj NyasMukteshwarv.DCIT (2022) 197 ITD 224 (Nagpur) (Trib.)

S. 11 : Property held for charitable purposes-Granting of tenancy to a company in which the trustees are interested-Premium charged-No violation of section 13((3)-Denial of exemption is not justified [S. 12A, 13(3)]

Assessee, a charitable organisation registered under section 12A was engaged in charitable activities in field of education and, claimed exemption under section 11 of the Act.AO denied exemption under section 11 holding that property of trust was under possession and use by a company, Drishti Advertisement Pvt Ltd, in which trustees were interested, who were covered under section 13(3) and rent charged was much lesser than market rate. Held that the authorities did not take into consideration said premium paid by DAPL in respect of aforesaid tenancy, over and above agreed rent, and only considered rent paid by Drishti Advertisement Pvt Ltd. Denial of exemption was held to be not valid. (AY. 2010-11)

Mehta Charity Trust. v. DIT (2022) 197 ITD 501 (Mum) (Trib.)

S. 11 : Property held for charitable purposes-Delay in filing of Form 10B-Filed before CIT(A) during appellate stage-Directed to allow the exemption [S. 12A(1)(b), Form No.10B]

Assessee-trust claimed exemption under section. 11 of the Act. The AO denied the claim on the ground that the return of income was not accompanied by an audit report in Form No. 10B. On appeal the assessee filed the requisite audit report in Form No. 10B for the first time. CIT (A) held that appellate proceedings before Commissioner (Appeals) are the continuation of assessment proceedings and, therefore, late filing of audit report would not disentitle the assessee from claiming exemption under section 11 of the Act and directed the AO to allow assessee benefits of exemption under section 11 of the Act. On appeal by Revenue Tribunal affirmed the order of CIT(A). (AY. 2002-03

DCIT (E) v. AudyogikShikshan Mandal. (2022) 195 ITD 153 /220 DTR 217 /(2023) 221 TTJ 261(Pune) (Trib.)

S. 11 : Property held for charitable purposes-Letting halls and buildings-Denial of exemption is not justified [S. 2(15), 12AA]

The assessee had let out its cultural hall and buildings for earning revenue and the income was utilised for objects of the Trust. Denial of exemption was not valid. (AY.2010-11)

Oswal Bandhu Samaj. v. ITO (E) (2022) 195 ITD 200/ 94 ITR 78 (SN) / 219 TTJ 103 (Pune) (Trib.)

S. 11 : Property held for charitable purposes-Object to promote cricket and other sports at State as well as at the National level-Earning was not the predominant purpose-Entitle for exemption [S. 2(15) 12]

Assessee is engaged in promoting various sports especially cricket at the State as well as at the National level. The assessee had shown income under the head income from other sources

amounting to Rs. 1.57 crores which consisted of annual maintenance fees from members, renting of ground and tournament income. The AO held that the income from other sources was from activities that were commercial in nature as the aggregated value of receipts exceeded Rs. 25 lakhs and would be covered by the first proviso to section 2(15) hence disallowed exemptions of various receipts available to assessee under section 11 of the Act. CIT (A) allowed the exemption. On appeal, the Tribunal held that since the predominant object of assessee was to promote cricket and other sports and receipts shown under the head income from other sources were from activities undertaken in furtherance of various sports, profit earning was not the predominant purpose of the proviso to section 2(15) could not have been invoked. Order of CIT(A) (AY. 2009-10)

ACIT (E) v. Surat District Cricket Association. (2022) 195 ITD 271 / 218 TTJ 39 (UO) (Surat) (Trib.)

S. 11 : Property held for charitable purposes-Capitalisation fees-Cash from students-Utilised for personal gain of President of the Institution-Denial of exemption is justified [S. 13]

Assessee collected capitation fees in cash from students for admission under management quota in the institution run by the assessee and said fees instead of being used for objects of society were transferred to the president of the assessee-society. Denial of exemption is held to be justified. (AY. 2008-09 to 2014-15)

Sinhagad Technical Education Society. v. DCIT (2022) 195 ITD 683 (Pune) (Trib.)

S. 11 : Property held for charitable purposes-Application of income-Trust is allowed to carry forward deficits of earlier years and set it off against surplus of subsequent years-Accumulation of income-Amendment is applicable from 1-4-2022 and will, accordingly, apply in relation to assessment year 2022-23 and subsequent assessment years.[S. 10(23C)]

Held that a trust could be allowed to carry forward deficits of earlier years and set it off against surplus of subsequent years. Held that Explanation 2 inserted after Explanation 1 under section 10(23C) which provides that calculation of income required to be applied or accumulated during previous year shall be made without any set-off or deduction or allowance of any excess application of any of year preceding previous year is applicable from 1-4-2022 and will, accordingly, apply in relation to assessment year 2022-23 and subsequent assessment years.(AY. 2011-12)

DCIT (E) v. UTI Institute of Capital Markets. (2022) 194 ITD 149 (Mum) (Trib.)

S. 11 : Property held for charitable purposes-Activities of providing swimming pool facilities for aquatic events and training and facilities for other sports and squash, billiards and table tennis etc., were activities of carrying out object of general public utility-Entitle to exemption [S. 2(15)]

Assesseetrust iscarrying on activities of providing swimming pool facilities for aquatic events and training and facilities for other sports and squash, billiards and table tennis.. In addition to aforesaid objects, assessee was also imparting facilities of playing cards and also having permit room bar and restaurant. It was registered with Charity Commissioner and was also granted registration as a Charitable institution under section 12A of the Act.AO denied exemption under section 11 primarily for reason that activities of assessee included facility of bar room, which, according to him, could not be considered to be for charitable purpose. CIT(A) up held the order of the AO. On appeal the Tribunal held that except for providing a bar room, all other activities of providing swimming pool facilities for aquatic events and training and facilities for other sports and squash, billiards and table tennis etc., were activities of carrying out object of general public utility. Therefore, assessee trust was a

charitable trust within meaning of section 2(15), hence, entitled to exemption under section 11 of the Act. (AY. 2009-10, 2011-12, 2012-13)
Navi Mumbai Sports Association. v. ADIT (2022) 194 ITD 499 (SMC (Mum) (Trib.)

S. 11 : Property held for charitable purposes-Objective of generating and propagating innovative ideas on housing,-Construction activity carried on during the year-Denial of exemption is justified.[S. 12AA]
Object of the Trust is to serve as seminal agency formed to generate and propagate innovative ideas on housing. During year, assessee undertook construction projects given by State Government such as road and building repairs, white wash etc., and received funds for said project.Assessee claimed exemption under section 11.AO held that such construction activities carried out by assessee under said project were akin to activities carried out by a private contractor/developer on a commercial basis, thus, he denied exemption. On appeal the Tribunal held that since construction activity carried on by assessee became its principal activity and there was no nexus between such construction activity carried on and objects of assessee that could constitute an activity incidental to attainment of objects of society denial of exemption is valid.(AY. 2015-16)
Zilla Nirmiti Kendra. v. ACIT (2022) 194 ITD 514 (Bang) (Trib.)

S. 11 : Property held for charitable purposes-letting out kalyana mandapa-Commercial activity-Denial of exemption is justified [S. 2(15) 12A]

Assessee-charitable society was primarily engaged in activity of letting out of kalyana mandapa.AO held that assessee would not be entitled for exemption under section 11 as assessee was charging fees which was more than prescribed limit for letting out mandapa. On appeal the Tribunal held that since letting out was being done on commercial basis by charging exorbitant amount, same would be a commercial activity as per proviso to section 2(15) and denial of exemption is valid. (AY. 2012-13)
Kuchalambal Charities. v. ITO (2022) 194 ITD 662 (Bang) (Trib.)

S. 11 : Property held for charitable purposes-Rental income assessed as income from house property-Deduction of 30% is allowable u/s 24(a) of the Act [S. 22, 24(a)]
Held that when the rental income is assessed under the head income from house property the deduction of 30% under section 24(a) is allowable (ITA No. 449/ Ahd/ 2019 dt.27-7-2021) (AY. 2015-16)
Vishwa Kalyan Society v. DCIT (2022) The Chamber's Journal-February-P. 182 (Ahd)(Trib)

S. 11 : Property held for charitable purposes-Education-Study and promote the latest development in the filed of Architecture-Mere surplus arising as a result of charitable activities the Institution does not cease to be a charitable institution-Entitle to exemption. [S. 2(15), 12A, Architect Act, 1872]
The assessee is a trust registered with the Charity Commissioner and also under section 12A of the Income-tax Act, 1961. The assessee plays a major role in promoting the profession of

architect by organising and uniting the Architects of India. The Assessee has shown income from membership fee advertisement, sale of publication, sponsorship fee,etc.The AO denied the exemption under section 11 of the Act on the basis that the activities of the assessee do not qualify as 'education' within the meaning of section 2(15) of the Act. Order of the AO is affirmed by the CIT(A). On appeal the Tribunal held that the assessee conducts architecture examinations, publishes journals, conducts seminars, conferences for promoting the profession of Architects etc. The Tribunal also observed that mere surplus arising as a result of charitable activities the institution does not cease to be a charitable institution. denial of exemption is not valid. Tribunal directed the AO to allow exemption under section 11 of the Act.(ITA No. 293/Mum/2022 dt 19-5-2022,Bench "E")(AY. 2017-18)
The Indian Institute of Architects v. ITO (Mum)(Trib) www.itatonline.org

S. 11 : Property held for charitable purposes-Education-Publication of Text books and selling of school text books-Surplus income utilised for education-Entitled to exemption. [S. (2(15),11(4A), 12]
Held, that merely because the assessee had generated profits out of the activity of publishing and selling school textbooks it did not cease carrying on the activity of education. The surplus amount earned was again ploughed back into the main activity of education. Therefore, the assessee was entitled for exemption under section 11. The AO was directed to allow exemption with all consequential benefits.(AY.2011-12, 2012-13, 2014-15)
ACIT (E) v. Delhi Bureau of Text Books (2022)93 ITR 411 (Delhi)(Trib)

S. 11 : Property held for charitable purposes-Search and seizure-Concluded assessment-Date for issuance of notice under section 143(2) of the Act had already expired-No incriminating material was found for the assessment years in question-Denial of exemption is not valid [S. 132,143(2), 153A]
Held that the assessment orders for the assessment years 2008-09 to 2011-12 showed that none of the material seized related to the assessment years concerned. The assessments for these assessment years were already completed or the date for issuance of notice under section 143(2) of the Act had already expired. Therefore, since there was no incriminating material found during the search for these assessment years, the Commissioner (Appeals) was justified in directing the AO to grant the benefit of exemption under section 11 of the Act.(AY.2008-09 to 2011-12)
Sri BasaveshwarVeerashaivaVidyavardhak Sangha v. Dy. CIT (2022)93 ITR 36 (SN)(Bang) (Trib)

S. 11 : Property held for charitable purposes-Accumulation of income-Failure to file Form 10 on time-Form 10B was furnished along with the return-Matter remanded.[S. 11(2) 12A]
The assessee claimed that form 10 was furnished later on but the same was not considered by the AO who denied the benefit under section 11(2) of the Act and that form 10B was furnished along with the return of income. Tribunal held that it was not clear whether the deficiency, if any was brought to the knowledge of the assessee. Therefore considering the totality of the facts, this issue was to be set aside and remanded to the AO for adjudication afresh in accordance with law after providing due and reasonable opportunity of being heard to the assessee.(AY.2015-16)
Himalayan Buddhist Cultural Association v. ACIT (2022)93 ITR 57 (SN)(Chd) (Trib)

S. 11 : Property held for charitable purposes-Application for registration for pending before CIT(E)-Pendency of appeal before CIT(A)-Justified in rejecting exemption [S.12A(2), 12AA]

Assessee was registered under Societies Registration Act and main object of assessee society was imparting education.Assessee was not registered under section 12AA. It filed its return of income claiming exemption under section 11.AO disallowed same on ground that assessee was not registered under section 12A and made addition treating corpus fund receipts/donations as income of assessee. CIT(A) affirmed the addition. On appeal before the Tribunal the assessee contended that an application in Form no. 10A seeking registration under section 12A/12AA was pending before Commissioner (E) during course of appellate proceedings before Commissioner (Appeals) and same was granted by Commissioner (E) subsequently and, therefore, assessee was eligible to get benefit as per amendment in proviso of section 12A(2) of the Act.On appeal the Tribunal held that the assessee was unable to explain specific purpose for which such corpus fund was said to received by it. Further since assessee society was not registered under section 12A/12AA, AO was justified in rejecting exemption under section 11 and making addition treating corpus fund receipts/donations as income of assessee. (AY. 2014-15)

Bhagawan Sree MahayogiLakshmamma Educational Society, Adoni. v.ITO (2022) 193 ITD 591 (Hyd) (Trib.)

S. 11 : Property held for charitable purposes-Corpus donation-amount utilised for acquiring fixed assets-Allowable as deduction [S. 11(1)(a), 11(1)(d), 11(6)]

Tribunal held that the corpus donation as referred to in section 11(1)(d) of the Act does not require any application of income as it has to be received with specific direction that it would form part of the corpus of the trust or institution as contemplated in section 11(1)(a) of the Act. Therefore, incurring of capital expenditure out of the corpus fund, if read with inserted provisions of section 11(6) of the Act, has to be allowed. The assessee used the corpus donations for the purpose of construction of eye-care hospital building and other medical facilities for catering to the needs of people in remote tribal areas. Section 11(6) does not make any distinction as to whether such income should be only revenue receipts and not capital receipts in the form of corpus donation with specific directions for construction of the hospital building and other infrastructural facilities as brought on record by the assessee. Order of CIT(A) is affirmed.(AY. 2015-16)

JCIT v. Divya Jyoti Trust Tejas Eye Hospital (2022)194 ITD 772 / 94 ITR 51 (SN))/ 219 TTJ 1108 / 219 DTR 47 (Ahd) (Trib)

S. 11 : Property held for charitable purposes-Accumulation of income-Amount spent on the objects of the Trust-Excess of expenditure-Carry forward to subsequent years-[S. 11(1)(a)]

The Assessee claimed an exemption u/s 11(1)(a) at the rate of 15% of its gross receipts and claimed balance deficit being excess of expenditure over receipts to be carry forward to subsequent years. AO rejected the claim of the Assessee u/s 11(1)(a) on the basis that since there was excess of expenditure over gross receipts the assessee is not entitled to any

accumulation as there is no surplus receipts left after application for current year. Accordingly, no carry forward of deficit was allowed to be carried forward to subsequent years either. CIT(A) held that the claim u/s 11(1)(a) is unfettered and the said section does not lay any specific condition for allowability of such exemption and set aside AO's order. The ITAT upholding the CIT(A)'s order further relied upon the order of Supreme Court in case of Subros Educational Society [(2018) 303 CTR 1 (SC) held that any excess expenditure incurred by trust in earlier assessment year would be allowed to be set-off against income of the subsequent years..(AY 2015-16)

Dy.CIT v.Dr. D. Y. Patil Educational Enterprises Charitable Trust (2022) 94 ITR 65 (Mum) (Trib.)

S. 11 : Property held for charitable purposes-Filing of audit report in Form 10B is procedural requirement can be fulfilled even at a later stage by showing a sufficient cause-Entitled to exemption.[S. 154]

The Assessee is a registered charitable trust whose claim for deduction was disallowed for non-filling of audit report in Form 10B. On being brought to notice, the Assessee uploaded the audit report and filed a rectification application u/s 154 of the Act. The said application was rejected by the AO and which was upheld by the CIT(A) on the ground that Form 10B was not furnished before the due date of filing return of income. The ITAT held that though the audit report in Form 10B was not filed within the due date of filing the return of income it was available before the CIT(A) since it was uploaded much before filing the section 154 application. The ITAT held that the Assessee has complied with the procedural requirement and directed the AO to grant necessary deduction under S. 11 of the Act. (AY.2014-15)

Trinity Education Trust v. ITO(E) (2022) 94 ITR 77 (SN)(Surat) (Trib)

S. 11 : Property held for charitable purposes-Income from letting out of building and cultural hall, etc-Medical relief to poor patients, education to deserving students and relief to the needy sections of the society-Denial of exemption is not justified [S. 2(15), 12AA]

The claim of exemption u/s 11 of the Act by Assessee was rejected by the AO because according to AO the Assessee was carrying out objects of general public utility and generated income from letting out of building and cultural hall, etc. which was in the nature of business activity and therefore, the Assessee was hit by the proviso to section 2(15) and ceased to have any 'charitable purpose'. The decision was upheld by CIT(A). The ITAT examined the Income and Expenditure Accounts and held that the activities undertaken by the Assessee throughout the year and it came to a finding that the assessee had actually carried out those objects which could be classified as Medical relief to poor patients, education to deserving students and relief to the needy sections of the society and shied away from taking up any objects for 'advancement of any other object of general public utility. Entitle to exemption. (AY 2010-11)

Oswal Bandhu Samaj v. ITO (E) (2022) 195 ITD 200/ 94 ITR 78 (SN) / 215 DTR 374 (Pune) (Trib)

S. 12A : Registration –Trust or institution-Bogus earthquake relief donations-Cancellation of registration was up held-Review Petition filed against Supreme Court order dismissing SLP which was dismissed [S. 260A Art, 136]

Assessee was a Public Charitable Trust engaged in field of education, relief to poor and other general public charitable objects. On scrutiny, Director of Income-tax (DIT) observed that

assessee trust, in collusion with its sister concerns, had hatched a web of bank transactions in order to defraud revenue and to enrich its sister concerns by giving them receipts for receipt of bogus earthquake relief donations which had entitled them to claim exemption from their taxable income. DIT withdrew registration granted to assessee under section 12A. Tribunal did not confirm order of DIT but observed that such order was passed solely on basis of activities carried on by assessee during previous year and suggested that DIT ought to have looked into affairs of Trust for subsequent year also and without doing so, could not have withdrawn registration. High Court held that there was no relevance of events which might have taken place in later year and accordingly restored order of DIT holding that registration granted to assessee trust had rightly been cancelled as assessee trust was not carrying on any charitable activity and was involved in misutilisation of bank account Special Leave Petition filed against said impugned order was dismissed. On review petition the Court held that there being no error apparent on face of record, review petition was to be dismissed.

K. Varma Charitable Trust v. DIT (E) (2022) 287 Taxman 665/ 218 DTR 200 / 329 CTR 269 113 CCH 165 (SC)

Editorial :K. Varma Charitable Trust v. DIT (E) (2022) 139 taxmann.com 17 (SC)

S. 12A : Registration –Trust or institution-Bogus donation-Cancellation of registration was set aside.[S. 12AA(3)]

CIT (E) cancelled the registration on ground that assessee-trust was engaged in money laundering as name of assessee-trust appeared in list of bogus donor on basis of statement of managing trustee of Education and Research Trust.Tribunal set aside the order of the CIT(E). On appeal the Court held that CIT(E) had not brought on record said statement and there was no document or material available with CIT(E) to hold that assessee had given donation to said Education and Research Trust during year. in absence of any material, allegations against trust based on which registration was cancelled were all bald allegations with nothing specific against assessee and order for cancellation of registration was to be set aside. Order of Tribunal is affirmed.

CIT (E) v. Vidya Bharati Society for Educational & Scientific Advancement. (2022) 447 ITR 732/ 285 Taxman 659/ 210 DTR 193/ 325 CTR 570 (Cal) (HC)

S. 12A : Registration –Trust or institution-Order of Tribunal directing the CIT(E) to grant registration is affirmed.[S. 260A]

Dismissing the appeal of the Revenue the Court held that, the Tribunal has taken note that the registration was granted in the subsequent year. No substantial question of law.(AY. 2019-20)

PCIT v. Jawaharlal Nehru Technological University (2022) 328 CTR 697 (Telangana) (HC)

S. 12A: Registration –Trust or institution- Registration of trust- Donation given with specific direction form part of corpus- Absence of registration- Taxable as income . [S. 11(1)(a), 12]

Held, that since the assessee-trust was not registered and therefore, the corpus donations received by the trust fell within the ambit of income derived from property and hence were includable in the total income of the assessee-trust. (AY. 2014-15)

Veeravel Trust v. ITO (2022)98 ITR 311 (Chennai) (Trib)

S. 12A : Registration –Trust or institution- No activities were carried out — Commissioner (E) directed to grant registration from date of first application . [R. 17A]

Held, that in the case of a newly formed trust, in the absence of activities, the trust deed ought to have been satisfied by the Commissioner (E) for grant of registration. The requirement of filing of evidence under rule 17A was not relevant for consideration of the application for registration. The Commissioner (E) did not take into consideration the trust deed filed by the assessee. Post passing of the order, the assessee had been granted registration on December 31, 2021, on the very same objects with the original application for registration. Therefore, the Commissioner (E) was directed to grant registration from the date of the first application, i. e., March 19, 2020.(AY.2021-22)

Sant Baba Aasudaram Sewa Samiti v. CIT (E) (2022) 99 ITR 531 (Lucknow) (Trib)

S. 12A: Registration –Trust or institution- Charitable purpose —Memorandum of Association providing that upon winding up or dissolution assets or property shall be distributed amongst members —Not entitle to registration.

The Tribunal held that the primary condition for the grant of registration under section 12A is that the assessee is a public charitable trust and is required to fulfil the conditions mandated under the 1961 Act for the grant of exemption from tax. The assessee's constitution or memorandum of association clearly provided that in the case of winding up or dissolution of the assessee, the proceeds of assets or property shall be distributed amongst the members, which clearly militated against the charitable nature of the trust. Further, there was no irrevocability clause, that the creation of the charitable entity was irrevocable, and all the funds or property which became part of the assessee shall not revert back to the contributors or members. The constitution or memorandum of association of the assessee did not have a clause that the property or funds of the assessee shall be used solely for the charitable objects of the assessee. Further, the constitution or memorandum of association did not have a clause that the beneficiaries of the assessee shall be the public at large and not specific individuals. The assessee had not produced the amended constitution or memorandum of association. The onus was on the assessee to prove that it was a charitable entity fulfilling all the statutory requirements, which it had not done. (AY. 2019-2020)

Atmanusandhan Kendra Kalyanpuri v. CIT(E) (2022)96 ITR 50 (SN) (Varanasi) (Trib)

S. 12A : Registration –Trust or institution-Mistakenly claimed exemption u/s 10(23C)-Directed to allow exemption under section 12A [S. 10(23C)]

Assessee in earlier years had been claiming exemption under section 10(23C) and it got registration under section 12A on 2-9-2014 and in return filed for the assessment year 2014-15 it claimed exemption under section 10(23C) instead of claiming same under section 12A of the Act. Held that mistake had occurred due to ~~a~~ human error and the AO was directed to allow an exemption under section 12A of the Act. (AY. 2014-15)

Desh Bharti Public School Samiti. v. DCIT (2022) 195 ITD 600 (Lucknow) (Trib.)

.S 12A: Registration –Trust or institution-Genuineness of the transaction was not doubted-Refusal of registration was not justified [S. 2(15)]

Held that when the genuineness of Trust has not been doubted refusal of registration was not valid.

Share India. v. CIT (2022) 195 ITD 551 (Hyd) (Trib.)

S. 12A : Registration –Trust or institution-Cancellation of registration-CIT(E) had dropped the proceedings initiated for cancellation of registration-AO has no authority or right to treat the registration is not valid.[S. 11]

Held that the AO had no authority or right to treat registration granted by higher authority, i.e. Commissioner (Exemption) as not valid. when CIT(E) having approved objects of trust for registration under section 12A meant that he had satisfied himself that objects were within charitable activities. Even after amendment to object clause, there was absolutely no change and CIT (E) had taken a decision to drop proceedings initiated for cancellation of registration granted under section 12A therefore, assessment order passed was void and was accordingly to be set aside. (AY. 2012-13)

DaivadnyaSamjonnati Parishad Mahajanwadi Mandal. v. ITO (E) (2022) 194 ITD 152 (Mum) (Trib.)

S. 12A : Registration –Trust or institution-CIT(E) cannot merely rely upon one selective aim and object to deny registration.[S. 11, 80G]

Assessee-medical trust applied for registration under section 12A. One of its objects was to pursue medical research which according to the CIT(Exemption) does not qualify as 'education' and is therefore commercial in nature. Accordingly, the registration application was rejected. On appeal by the assessee, the Tribunal took a view in favor of the assessee holding that where assessee-medical charitable trust was denied registration under section 12A on ground that assessee's prime intent was only to pursue medical research (which was not covered under term 'education'), in view of fact that assessee was not only established for medical research but rather for various other charitable aims and objects viz. establishing professional colleges, hospitals, health promotion facilities like health club, yoga and meditation facilities etc., impugned denial of registration under section 12A merely by relying upon only selective aim and object of assessee was unjustified.

Artemis Education & Research Foundation v. CIT (2022) 216 TTJ 58 (Delhi)(Trib)

S. 12A : Registration –Trust or institution-Assessment order denying the exemption-Commissioner (E) granted exemption from inspection-Rectification application was denied-Entitled to exemption-Directed to rectify the order [[S. 11, 12 13, 154]

Held that due to late receipt of the order from the Commissioner (E) granting registration under section 12A the assessee could not mention it in its return of income. That omission of that fact could not be the reason for not giving the benefit under section 11 / 12 / 13 of the Act. Since the assessee had been granted registration under section 12A of the Act with effect from November 16, 2015, i. e., much before the return of income was in fact filed, the assessee was entitled to the benefit under section 11 / 12 / 13 of the Act unless the AO during scrutiny was able to find out that there was misrepresentation in respect of its claim of voluntary donation or application of its income. Once section 12A registration had been granted to an assessee, its income had to be computed under Chapter III of the Act. There was a mistake apparent on the face of the record and the AO was to grant benefits under section 11 / 12 / 13 of the Act in accordance with law.(AY. 2016-17)

Rotary Presidency Foundation v. ITO (E) (2022)94 ITR 47 (SN.)(Kol)(Trib)

S. 12AA : Procedure for registration –Trust or institution-Registration cannot be denied for failure to start charitable activities [S. 12A,12AA(3)]

Dismissing the appeal of the Revenue the Court held that registration cannot be denied for failure to start charitable activities. The Assessing Authority has the power for cancelling the registration in case he found that the "charitable activity" was not undertaken, set up or established by the assessee.

DIT (E) v. Meenakshi Amma Endowment Trust (2022)447 ITR 663 / / 219 DTR 505 / 329 CTR 594 / 289 Taxman 405 (SC)

Editorial : Decision in DIT (E) v. Meenakshi Amma Endowment Trust (2013) 354 ITR 219 (Karn)(HC), affirmed.

S. 12AA : Procedure for registration –Trust or institution-Deemed registration-Non-disposal of application under section 12AA within stipulated period of six months as provided in section 12AA(2) would not result in deemed grant of registration. [S. 12A, 12AA(2)]

Held that non-disposal of application for registration under section 12AA within stipulated period of six months as provided in section 12AA(2) would not result in deemed grant of registration. Order of Full Bench in CIT v. Muzafar Nagar Development Authority (2015) 372 ITR 209 / 231 Taxman 490 (All)(HC)(FB) affirmed.

Harshit Foundation SehmalpurJalapurJaunpur v. CIT (2022) 447 ITR 372/ 287 Taxman 394 / 217 DTR 441 / 328 CTR 609/ 114 CCH 52 (SC)

Editorial: Refer CIT v. Harshit Foundation SehmalpurJalapurJaunpur(2022) 139 taxmann.com 55 (All)(HC),CIT v. Muzafar Nagar Development Authority (2015) 372 ITR 209 (FB)) (All)(HC), approved

S. 12AA: Registration of Trust Deed-Cancellation of Registration-Once registration has been granted under section 12AA after satisfying about genuineness of the activities of the Trust, the same cannot be cancelled on the basis of the same set of provisions of the Trust-.[S.12A, 12AA (3)]

The Trust entered into development agreement for development of its properties for the benefit of the Trust. However, taking exceptions to the transfer of the property of the Trust, a PIL was filed before the Hon'ble High Court of Jharkhand alleging illegal transfer of property belonging to the Appellant-Trust and other related action of the Trust. The Court after taking note of the earlier Trust Deeds of the years 1948 and 1987 held that it was the wishes of the founder of the Trust that its property could not have been sold, and by giving complete go-bye to the wishes of the founder, by a subsequent Deed dated 20.09.2005, the properties of the Trust were sold and directed CBI investigation. This order was challenged by way of an SLP. Subsequent to this order dated 07.06.2017, CIT issued show cause notice dated 18.12.2017 to the Appellant-Trust for cancellation of its registration under section 12AA of the I.T. Act relying on order dated 07.06.2017 passed in W.P. and on the ground that the Trust is violating the aims and objectives mentioned in the Trust-Deed and/or Memorandum of Association and subsequently cancelled the registration granted to the Appellant-Trust on the ground that the activities of the Trust are not genuine vide order dated 04.09.2018. The ITAT upheld the said order in appeal vide order dated 30.10.2019. On further appeal, the Court allowed the appeal, set aside order passed by ITAT.

Sri. RamjankiTapovan Mandir v. CIT (E) (2022) 220 DTR 49 / 329 CTR 745 (Jharkhand) (HC)

S. 12AA : Procedure for registration –Trust or institution-Registration was granted after considering the genuineness Of institution-Cancellation of registration on the same provisions in the trust deed is not valid-Appeal To Appellate Tribunal-Powers Of

Tribunal-Appellate Tribunal-Tribunal cannot make own case de novo.[S. 11(IA), 12AA(3), 254(1)]

The question before the High Court was whether the registration once granted under section 12AA of the Act could be cancelled of the same set of provisions of the Trust which were examined earlier. The court held that cancellation of registration on the same provisions in the trust deed is not valid. The Court also held that the Tribunal had clearly travelled not only beyond the show-cause notice but, also the order passed by the Commissioner (E). In an earlier proceeding pertaining to the year 2013-14, the Tribunal had clearly held that the trust deeds were not relevant for allowing the benefit of exemption and the income derived from the transfer of property was as per the objects of the trust. The Central Board of Direct Taxes Instruction No. 883-CBDT F. N. 180/54/72-IT (AI) dated September 24, 1975 stated that the investment of net consideration received on the transfer of a capital asset in fixed deposit with a bank for a period of six months or above would be regarded as utilization of the net consideration for acquiring another capital asset within the meaning of section 11(1A) of the Income-tax Act. Admittedly, the assessee-trust had deposited the sale proceeds in fixed deposit with the bank for a period of more than six months and, thus, it could not be said that the assessee-trust had utilised the sale proceeds contrary to the objects of the trust. The cancellation of registration was not valid.

Sri RamjankiTapovan Mandir v. CIT (E) (2022) 329 CTR 745 / 220 DTR 49 / (2023)451 ITR 458/ 290 Taxman 317 (Jharkhand)(HC)

S. 12AA : Cancellation of registration –Trust or institution-Survey-No incriminating material was found-Accommodation entries-Cancellation of registration without giving an opportunity of cross examination is not valid. [S. 12A, 133A]

Assessee trust was registered under section 12A of the Act. Survey was conducted on another assessee-'School of Human Genetics & Population Health' whose treasurer recorded a statement that they had been providing entries to different entities. CIT(E) cancelled assessee's registration under section 12AA stating that the assessee had received donation from the said School and then returned the money thereby indulging in money laundering which is illegal and not in accordance with the objects of the assessee trust. Tribunal allowed the assessee's appeal challenging the order of the CIT(E). Tribunal held that no incriminating material was found against the assessee except for a statement of the treasurer of the said School at the time of survey wherein again no specific allegation was made against the assessee. High Court upheld the order of the Tribunal. High Court also refused the tax department's request for remanding the matter to CIT(E) for fresh consideration. High Court observed that the documents which were the basis of CIT(E) finding were not furnished to the assessee and secondly the treasurer of the School whose statement was recorded was not presented for cross-examination and that the revenue could not be given one more opportunity to rectify its mistake. (AY. 2013-14)

CIT(E) v. Mayapur Dham Pilgrim & Visitors trust (2022) 214 DTR 441 /328 CTR 984 (Cal)(HC)

S. 12AA : Procedure for registration –Trust or institution-Limitation period of six months-Any decision taken afresh in pursuance to directions of the appellate authority the period of limitation of six months is not applicable [S. 12AA(2), 80G, Form 10A]

Pursuant to the direction of the Tribunal, the CIT has passed the order once again rejecting the application for registration. On appeal the Tribunal held that once the application was not decided within the period of six months of the act after the judgement of the ITAT dated 12-

1-2011 the assessee became entitled for registration under section 12AA and also approval under section 80G of the Act. On appeal by the Revenue allowing the appeal the Court held that any decision taken afresh in pursuance to directions of the appellate authority the period of limitation of six months is not applicable.(ITA No. 3 of 2014 dt 23-8-2022)
CIT v. Raghuraji Devi Foundation Trust(2022) 217 DTR 442/ 328 CTR 610(AP)(HC)

S. 12AA : Procedure for registration –Trust or institution-Registration-Trust cannot be assessed as an AOP-Order of Tribunal is affirmed.[S. 11]
AO assessed income of assessee-trust as an Association of Persons (AOP).Tribunal held that only reason why AO assessed income of assessee as an 'AOP' was that registration granted to assessee under section 12AA was cancelled by Commissioner. Order of cancellation of registration was set aside by Tribunal and, therefore, direction was issued to AO to assess assessee as a trust and not as 'AOP'.Dismissing the appeal of the Revenue the Court held that Trust cannot be assessed as an AOP. (AY. 2009-2010)
CIT v. Guru Nanak Educational Trust. (2022) 288 Taxman 97 / 210 DTR 297 (Cal)(HC)

S. 12AA : Procedure for registration –Trust or institution-Cancellation of registration-Survey-Donation-Accommodation entries-Money laundering activity-Not brought on record anything to show that activities of assessee were not genuine or activities were not being carried out in accordance with objects of society-Cancellation of registration is not valid.[S. 2(15),11, 133A]
During survey conducted upon an organisation its director recorded a statement that said organisation was engaged in money laundering and providing accommodation entries to different individuals and organizations by way of accepting donations and returning same to donors through web of financial transactions after retaining commission. Based on the statement Commissioner (E) held that donation received by assessee from said organisation was bogus, thus, trust was indulged in money laundering accordingly, he cancelled registration granted to assessee under section 12AA(3) of the Act. On appeal the Tribunal held that the donation was received by cheque and duly accounted for in profit and loss account as corpus donation which was applied for objects of trust. Commissioner (E) had not brought on record anything to show that activities of assessee were not genuine or activities were not being carried out in accordance with objects of society,further, there was not an iota of evidence brought on record by Commissioner (E) to connect assessee with money laundering activities of said organisation, further, director on whose statement Commissioner (E) relied was not presented for cross-examination. Accordingly the Tribunal held that cancellation of Registration is bad in law. On appeal by Revenue the Court held that cancellation of registration by Commissioner (E) solely for reason that it received donation from an organisation which was engaged in money laundering activity was unjustified. (AY. 2011-12)
CIT (E) v. Sanskriti Sagar (2022) 288 Taxman 153 (Cal)(HC)

S. 12AA : Procedure for registration –Trust or institution-Money laundering-Not doubted the charitable activities-Cancellation of registration is not valid [S. 12A]
Dismissing the appeal of the Revenue the Court held that the Revenue has not doubted the charitable activities in accordance with the objects of the trust.Followed CIT (E) v. Sri Mayapur Dham Pilgrim and Visitors Trust (ITAT No. 312 of 2017, dated 16-2-2022)

CIT(E) v. Balaram Hanumandas Charitable Trust (2022) 287 Taxman 209/ 113 CCH 349 (Cal.)(HC)

S. 12AA : Procedure for registration –Trust or institution-Cancellation of registration is not valid on the ground which was not contained in show cause notice [S. 115BBC]

Dismissing the appeal of the Revenue the Court held that cancellation of registration is not valid on the ground which was not contained in show cause notice. Order of Tribunal is affirmed.

CIT v. Guru Nanak Education Trust (2022) 286 Taxman 350 / 210 DTR 297/ 325 CTR 228 (Cal)(HC)

S. 12AA : Procedure for registration –Trust or institution-Educational institution-Failure to file return-Matter was remanded back to file of Commissioner (E) with direction to grant registration under section 12A if objectives and activities of assessee were found to be same-Order of Tribunal affirmed [S. 12A]

Assessee, an educational institution, had filed an application before Commissioner (E) seeking registration under section 12A of the Act. Commissioner (E) rejected the application of on ground that assessee had not filed return of income and had not obtained permission from Central Board of Direct Taxes while earning income abroad and, thus, it had violated provisions of Act. Tribunal held that for next assessment year 2020-21, assessee had been granted registration by Commissioner (E) under section 12A and remanded matter back to file of Commissioner (E) with direction to grant registration under section 12A if objectives and activities of assessee were found to be same. On appeal High Court affirmed the order of the Tribunal. (AY. 2019-20)

PCIT v. Jawaharlal Nehru Technological University. (2022) 286 Taxman 231/136 taxmann.com 43 / 216 DTR 396 / (2023) 423 ITR 699 /(Telangana)(HC)

S. 12AA : Procedure for registration –Trust or institution-Corpus donation of funds to another charitable trust-In One Accounting Year-Registration could not be cancelled. [S. 2(15), 11]

Dismissing the appeal of the Revenue the court held that the Tribunal had examined the facts of the case and pointed out that the activities of the assessee had not been doubted in all these years. The activities were duly accepted to be charitable by the Revenue and the Revenue failed to bring anything on record to controvert the submission made by the assessee. The CIT (E) was satisfied with the genuineness of the activities and granted registration to the assessee and before the Tribunal the activities of the assessee had not been doubted except by stating that corpus donation was given by the assessee to the other trust that too during only one AY.2006-07. The cancellation of the registration was not valid.(AY. 2006-07)

CIT(E) v. Nawal Kishore Kejriwal Charity Trust (2022) 444 ITR 532 / 214 DTR 276/ 327 CTR 453(Cal)(HC)

S. 12AA : Procedure for registration –Trust or institution-Cancellation of registration-Alternative remedy by an appeal-Writ is not maintainable [S. 12A, 264, Art, 226]

Dismissing the petition the Court held that there was nothing to demonstrate why the assessee did not upload the registration certificate under section 12AA of the Income-tax Act, 1961 in spite of adequate ample and multiple opportunities being given. The order of

cancellation of registration under section 12AA was revisable under section 264 of the Act. There was an effective and efficacious alternate remedy even against cancellation. The order was valid.(SJ)

Muvendar Trust v. ITO (2022)441 ITR 31/ 285 Taxman 147/ 209 DTR 153/ 324 CTR 261 (Mad) (HC)

S. 12AA : Procedure for registration –Trust or institution-Required to examine genuineness of institution-Denial of registration on the ground of profit was generated was not valid [S. 2(15)]

Application of assessee trust for grant of registration under section 12AA was rejected on ground that activities of trust were purely commercial and trust was primarily engaged in sale/purchase of medicine, pathological tests, x-ray etc., which were in nature of business. Tribunal held that activities of assessee were undoubtedly a charitable activity, therefore, assessee was eligible for registration under section 12AA. On appeal the Court held that prescribed authority while examining an application for grant of registration is only required to examine nature, activities and genuineness of institution and mere existence of profit/surplus did not disqualify institution. Order of Tribunal is affirmed.

CIT (E) v. Contai Rotary Community Welfare Trust. (2022) 285 Taxman 104 (Cal) (HC)

S. 12AA : Procedure for registration –Trust or institution-Cancellation of registration retrospectively-Making donation outside India-Cancellation of registration was held to be not valid-Order of Tribunal is affirmed.[S. 11, 12A]

Dismissing the appeal of the revenue the Court held that donations were made to a school in Nepal as per terms of trust deed and when registration was granted at first instance by then Commissioner on 14-12-1995, clauses and covenants as contained in deed of trust were examined and activities of trust were found to be genuine and after recording satisfaction registration has been granted. Accordingly since donations were made as per terms of trust deed, cancellation of registration by Commissioner was not valid. Order of Tribunal is affirmed. (AY. 2012-13)

CIT(E) v. Govardhan Foundation (2022) 284 Taxman 545/ 213 DTR 210/ 326 CTR 603 (Cal.)(HC)

S. 12AA : Procedure for registration –Trust or institution- Assessee claiming exemption after filing application of registration- Jurisdiction vesting on CIT (E) and not with CIT- Year of application to be considered to deemed registration-Entitled to exemption. [CBDT Notification No. 52 of 2014, dated 22-10-2014][S. 11, 12A]

Held, that the territorial jurisdiction was overruled by the concurrent jurisdiction which was covered by the Central Board of Direct Taxes Notification No. 52 of 2014, dated October 22, 2014. Furthermore, the registration under section 12AA was in action from the year of application. The year of application was considered as deemed registration and the claim of deduction under sections 11 and 12 should be applicable accordingly. Therefore, the assessing authority had acted beyond jurisdiction. The assessee's case is covered under deemed registration and would be entitle to claim exemption under section 11 of the Act . (AY. 2014-15, 2015-16).

Dera Baba Bhai Gurdas Ji Udasin Trust (Regd) v .ITO (2022)98 ITR 180 (Amritsar) (Trib)

S. 12AA : Procedure for registration –Trust or institution- Granted registration for subsequent years – Registration is required to be granted for earlier years for which assessment years are pending-Matter remanded to examine the claim under section 11. [S. 11, 12A(2), 143(3)]

Held that the assessee has filed its return for the year under consideration on 17th Jan, 2017, before the registration was granted by the CIT (E) under S. 12AA on 16th May, 2017, the assessment proceedings are commenced with the filing of return, were pending on the date of grant of registration. The assessee is entitled to registration and is eligible to exemption under S. 11 in the relevant assessment year in view of the second proviso to s 12A(2) of the Act . Matter remanded to examine the claim under section 11 of the Act . (AY. 2016 -17)

Santhan Shree Eknath Maharaj Viswastha Mandal v. ITO(E) (2022) 212 DTR 1 (SMC) (Pune)(Trib)

S. 12AA : Procedure for registration –Trust or institution- Conserve and enhance the natural environment and bio diversity -Not carried on activity -No restrictions to carry on activities abroad – Denial of registration is not valid. [S.2(15), 11(1)(a) 13(1)(c)]

Held that the main object of the assessee is to conserve and enhance the natural environment and bio-diversity which falls under the fifth limb of the charitable purpose i.e. preservation of environment, if at all the carries out some objects which are commercial in nature, the AO shall verify activities in the light of the provisions of S. 2(15) and examine benefit of exemption under S. 11. The assessee is entitled for registration under section 12AA of the Act .

Environmental & Social Research Organisation v. CIT (E) (2022) 209 DTR 41 / 216 TTJ 221 (Chennai)(Trib)

S. 12AA : Procedure for registration –Trust or institution-No specific finding by the PCIT – Matter is remanded to the file of the PCIT to examine the issue a fresh in accordance with law . [S. (2(15), 11]

Held that in the absence of findings by the PCIT on the disputed issues raised by the CIT while rejecting the assessee's application on seeking registration under 12AA, the matter is set aside to the file of PCIT to examine the issue a afresh as per law.

ICG-IISU Alumnae Association- Bandhan v. CIT(E)(2022) 215 TTJ 1 (UO) (Jaipur) (Trib)

S. 12AA : Procedure for registration –Trust or institution-Corporate social responsibility - In-house captive trust of its parent company established to meet corporate social responsibility – Refusal of registration of was held to be not valid . [S. 11, 12A]

Held that CIT (E) having neither disputed the charitable nature of the objects of the assessee-trust nor the genuineness of its activities, merely because for the reason that the ssessee-trust is an in-house captive trust of its parent company which has been established for complying the corporate social responsibility denial of registration was held to be not valid .(AY. 2018 -19, 2019 -10)

KDDL Ethos Foundation v. CIT (E) (2022) 219 TTJ 93 / 216 DTR 54 (SMC) (Chd)(Trib)

S. 12AA : Procedure for registration –Trust or institution-Self-certified copies sufficient for claim of exemption — Denial of registration is held to be not valid [R. 17A]

Held that according to the Explanation to rule 17A of the Income-tax Rules, 1962 , self-certified copies of documents were sufficient for registration under section 12AA of the Act. The Commissioner (E) had erroneously passed the order without considering that the assessee had submitted all necessary documents in response to the queries raised. He had failed to observe that the activities carried out by the trust were genuine in nature. The assessee was carrying on charitable activities in accordance with law and the main, and amended, objects of the trust deed. Moreover, a letter sent by the assessee was not considered by the Commissioner (E). Taking into consideration the facts and relevant documents, the assessee deserved registration under section 12AA . In terms of the amended rule 17A , the assessee was not required to produce any original copy of the documents ; self-certified copies were sufficient for the purpose of verification by the Commissioner (E).(AY. 2020-21)

Radheyshyam Mandir Trust v. CIT (E) (2022)100 ITR 168/ 220 TTJ 468/ 219 DTR 281 (Jaipur)(Trib)

S. 12AA: Procedure for registration –Trust or institution- Charitable purpose-Cancellation of registration - Cancellation cannot be with retrospective effect – Ceasing to be charitable institution- Sale of Institution in 2017 – Cancellation of registration from the date of ceasing to be charitable is held to be valid . [S.11, 12A, 12AA(3) , 80G (5), 132, 153A]

The Tribunal held that registration granted under section 12A of the Act, cannot be cancelled on retrospective effect. Held that since, assessee ceased to be the educational institution in the year 2017 the assessee could no longer be considered a trust existing for the purpose of carrying out charitable activities and hence was not entitled to the benefits of sections 11 and 12 of the Act. Cancellation of registration with effect from the date of ceasing to be charitable institution is held to be valid . (AY. 2007 -08)

Jeevan Jyoti Charitable Trust v. PCIT (2022)97 ITR 617/217 DTR 273 /219 TTJ 369 (TM) (All) (Trib)

S. 12AA: Procedure for registration –Trust or institution- Cancellation of Registration — Amendment of objects of Society in 2013 — No change in charitable nature of objects —Cancellation of registration not valid . [S. 2(15)]

The Tribunal held that the assessee's application for condonation of delay was to be allowed considering that the assessee was prevented from filing the appeal in time owing to the nationwide covid-19 pandemic situation which was beyond the control of human beings. Moreover, the Taxation and Other Laws (Relaxation of Certain Provisions) Ordinance, 2020 had granted extension of the limitation in the filing of appeals. The amended objects were within the scope of charitable purpose and were all approved since 2013 by the Department. There was no provision in the Act either to obtain any prior permission for making an amendment to the objects of the society or requiring the assessee to intimate the Department about the amendment. Registration under section 12AA, once granted, remained valid until it was cancelled by the Commissioner, by due process of law laid down under section 12AA(3) or (4), that too on an application made by the assessee for intimation of the amendment in the objects, which was subsequently withdrawn. The order passed under section 12A(1)(ab) was, hence, bad in law as well as on the facts merely on the ground of holding that the assessee was carrying out activities in the nature of business. CBDT Circular No. 21 of 2016 dated May 27, 2016 [1] also supported this stand. Moreover, each activity of the assessee satisfied the definition of section 2(15) and a comparison of receipts with the limb of section 2(15)

shows that the general public utility percentage was also less than 20 per cent. So even on the merits the view of the Commissioner (E) was incorrect. As his order cancelling the registration under section 12A(1)(ab) was bad in law, the assessee's registration was required to be continued.(AY. 2020-21)
Zila Paryawarn Sudhar Samiti v. CIT (E) (2022)96 ITR 149 (Jaipur) (Trib)

S. 12AA : Procedure for registration –Trust or institution-Amounts set apart for specific purposes-No assessment-Cancellation of registration is held to be premature [S. 12A, 12AA(4), 13, 132, 133A]
The registration was granted under section 12A of the Act.AO conducted survey on premises of assessees on 26-2-2020. Subsequently Authorized Officer conducted search under section 132 upon assessees on 5-11-2020. As a consequence of survey conducted on 26-2-2020 CIT (E) cancelled the registration on the ground that returns of income filed by trusts/entities were incorrect and incomplete, amounts set apart for specific purposes were found to have been indiscriminately and improperly used, inflation of expenses and misuse of trust properties. On appeal the Tribunal held that reasons would at best give rise to violations under section 13(1)(c) and 13(1)(d) which would result in additions in assessment and reassessment. In terms of provisions of section 12AA(4) there was no assessment order nor any evidence found or established against assessees on issues raised by Commissioner (E) by an order of any quasi-judicial authority nor had violation of any other law reached finality. Accordingly order of cancellation of registration was quashed as same was premature.
Last Hour Ministry. v. CIT (E) (2022) 196 ITD 259 (Cochin) (Trib.)

S. 12AA : Procedure for registration –Trust or institution-Denial of registration was not valid on the ground that the assessee has wrongly claimed exemption under sections 10(23BBA) and 10(23C)(v)-Registration under section 12AA was not dependent either upon section 10(23BBA) or 10(23C)(v)-Directed to consider application under section 80G for approval afresh. [S. 10(23BBA), 10(23C)(v), 11, 12A, 89G]
Assessee-society, engaged in carrying of charitable and religious activity, filed an application seeking registration under section 12A. CIT (E) rejected the exemption on grounds that; firstly, assessee had without any approval wrongly claimed deduction under sections 10(23BBA) and 10(23C)(v); secondly, assessee could not explain source of investment made in construction of a new building and; thirdly, assessee had received corpus donation in absence of registration under section 12AA Held that wrong claim of exemption under sections 10(23BBA) and 10(23C)(v) would not debar assessee from getting registration under section 12AA as registration under section 12AA was not dependent either upon section 10(23BBA) or 10(23C)(v). In response to query raised regarding investment in construction of building, assessee had furnished supporting evidence to explain such source. Receipt of corpus donation in absence of registration under section 12AA should not cloud vision of Commissioner (E) at stage of granting registration under section 12AA. There was nothing on record to suggest that either activities of assessee-society were not genuine or objects were not of charitable or religious nature.On facts the Tribunal directed the CIT (E) to grant registration. Fact that authority concerned was directed to grant registration under section 12AA to assessee, matter was to be remanded back to Commissioner (E) for considering assessee'sapplication under section 80G for approval afresh.
Sanatan Dharam Sabha. v. CIT (2022) 196 ITD 474/ 218 TTJ 529/ 215 DTR 361 (Delhi) (Trib.)

S. 12AA : Procedure for registration –Trust or institution-Ancient temple-Acquired by State government under Himachal Pradesh Hindu Public Religious Institution and

Charitable Endowment Act, 1984-Registration cannot be denied merely on ground that there was no original trust deed available-Matter is remanded to verify date of grant of registration to assessee. [S. 12A,Himachal Pradesh Hindu Public Religious Institution and Charitable Endowment Act, 1984, S. 29]

Assesseeis an ancient temple which was acquired by HP State government under provisions of section 29 of Himachal Pradesh Hindu Public Religious Institution and Charitable Endowment Act, 1984.Assessee filed application for registration under section 12AA. Commissioner (E) rejected said application on ground that there was no original trust deed of assessee. Held that theassessee-trust was added to list of temple trust under schedule of Endowment Act, 1984 and properties of assessee were acquired by State administration. Since assessee was taken over to fulfil charitable activities in terms of preamble and issues pertaining to objects of assessee-temple and bye-laws were directly addressed in terms of provisions of Endowment Act, 1984, there would be no occasion for assessee-trust to frame bye-laws for internal functioning. However, no specific document was placed by assessee for establishing date of acquisition, matter is remanded to verify date of grant of registration to assessee. (AY. 2013-14)

Temple Trust. v. CIT (2022) 196 ITD 482 / 218 TTJ 927/ 216 DTR 377 (Chd) (Trib.)

S. 12AA : Procedure for registration –Trust or institution-Benefit of Registration granted in subsequent year-The benefit of registration will be conferred even to earlier years assessment proceedings which are pending as on date of such registration. [S.11]

The assessee Trust filed its Return of Income on 17.01.17 claiming exemption u/s 11. The registration was granted on 16.05.17, ie after filing of Return, but before issuance of Notice u/s 143(2) on 20.09.17. AO denied the exemption on the ground that the assessment proceedings must be pending when the registration is granted. CIT(A) also concurred with the view of AO. On Appeal Tribunal, relying on Supreme Court decision in Auto & Metal Engineers v. UOI (1998) 229 ITR 399/ 146 CTR 379 (SC) held that, assessee trust is eligible for exemption u/s 11 of the Act, since the assessment proceedings commence with the filing of return and not when notice is issued for the first time u/s 143(2). (AY.2016-17)

Sansthan Shree Eknath Maharaj VishwasthaMandal.v. ITO (E) (2022) 195 ITD 46/ 216 TTJ 249 (SMC (Pune)(Trib.)

S. 12AA : Procedure for registration –Trust or institution-Refusal of Registration for non compliance of notices –Non compliance due to shifting of office-Matter remanded with direction to give an opportunity and decide after considering response of the assessee. [S. 12A]

Assessee a state Govt organisation failed to comply with notices in response to application for registration. Assessee admitted the non compliance citing reason for non compliance due to shifting of its office. However, based on records available, CIT(E) passed an ex parte order, rejecting the registration u/s 12AA for the reason that it could not verify the genuineness of the charitable activities with the objects of the Society. On Appeal the Tribunal, based on reasoning by the assessee society that it was in process of shifting its office at relevant time, set aside the matter to CIT(E) for deciding the matter afresh.

M P Council for Vocational Education &Training.v. CIT (E) (2022) 216 TTJ 142/ 211 DTR 73 (Indore)(Trib.)

S. 12AA : Procedure for registration –Trust or institution-CIT(E) while granting registration has to satisfy himself about the objects of the trust and its activities, and

cannot go beyond to verify the violations referred to under sections 11(1)(a) and 13(1)(c) of the Act.[S. 2(15) 11(1)(a), 13(1)(c)]

Assessee company incorporated u/s 25 of the Companies Act, filed an application in Form No 10A for registration u/s 12AA. The CIT(E) while processing the application, observed that, although main objects are charitable in nature, several incidental objects are commercial in nature as also the intent to carry out activities outside India are contrary to provisions of section 11(1)(a), and thus rejected the application for registration. On Appeal, the Tribunal held that, considering the main objects of the assessee being charitable in nature, and assessee proposes to carry out its activities in accordance with its objects, the assessee is entitled for registration. Furthermore, the question of looking into violations u/s 11(1)(a), or intentions to carry out objects which are commercial in nature will be examined while granting benefit of exemption u/s 11, and not while granting registration u/s 12AA.

Environnmental& Social Research Organisation.v. CIT(E) (2022) 216 TTJ 221 (Chennai)(Trib.)

S. 12AA : Procedure for registration-Trust or institution-Rejection of assessee's application for registration under section 12AA by the CIT (E) on the ground that it sought withdrawal of the application in view of revisionary petition filed under section 264, when in fact it had merely requested to hold proceeding for grant of registration in abeyance till disposal of revisionary proceedings, disposal of application was to be set aside and matter was to be restored back. [S. 264]

Assessee trust had applied for registration under section 12AA. Subsequently, the assessee had applied for revisionary proceedings under section 264 with respect to another proceeding. Accordingly, the assessee made an application before the CIT (E) to keep the registration in abeyance until the revisionary proceedings were concluded. However, the CIT (E) construed the application to be that of withdrawal of registration application and proceeded to reject the same. Aggrieved, the assessee preferred an appeal to the Tribunal who while remanding the matter back to the file of the CIT (E), observed that the assessee had requested for its application under section 12AA to be kept in abeyance till disposal of pending revisionary proceedings. However, the CIT (E) misinterpreted the assessee's application to be for withdrawal of application and proceeded to reject the same. In such a scenario, the disposal of registration application was set aside and the matter restored to the file of the CIT (E). (AY. 2017-18)

High Court Bar Association v. CIT (E) (2022) 216 TTJ 27/ 210 DTR 297 (All) (Trib)

S. 12AA : Procedure for registration –Trust or institution-Advancement of any other object of general public utility-It is not necessary that object of general public utility should be beneficial to whole mankind-Object beneficial to a section of public is also an object of general public utility-Merely leasing of developed plots to its members on basis of their respective contributions does not make assessee ineligible for registration as a charitable entity per se.[S. 2(15),11]

In the present case assessee society is stated to be engaged in promotion of trade and commerce related to pharma business, protecting rights and interests of its members, making its members aware about their duties, conducting seminars and workshops and organizing awareness camps and educating them about health and safety, cleanliness and also creating awareness about legal provisions and duties and obligations under Income Tax Act and other laws to help them becoming a law abiding citizens. The assessee applied for registration under section 11 and 12 of the Act. However, the CIT(E) rejected the same on the ground that the assessee leased developed plots to its members on the basis of their respective

contributions. On appeal the Tribunal held that endeavours of the assessee society tantamounts to advancement of public utility and hence making such objects charitable in nature. The Tribunal also relied on the decision of the Hon'ble Supreme Court in CIT v. Gujarat Maritime Board (2007) 295 ITR 561 (SC) which has held that "When an object is to promote or protect the interest of a particular trade or industry that object becomes an object of public utility. Accordingly, the Tribunal directed the CIT(E) to grant registration to the assessee.

Confederation of Pharma Dealers Association v. CIT (2022) 94 ITR 629 (Raipur)(Trib.)

S. 12AA : Procedure for registration –Trust or institution-Interest income earned on investment of surplus funds-Assessable as income from other sources and not as business income-Depreciation not allowable [S. 32, 56]

Held that the interest income earned on deposit of surplus funds kept with GSFC would not qualify as income from business or profession. The assesseewas not engaged in any business activity. The sole object of the assessee was promotion of sports in the State of Gujarat. The earning of interest on surplus funds kept with GSFC was incidental to its dominant objective to encourage sports in the State of Gujarat, itself could not qualify as a business activity. The interest income earned from surplus fund did not qualify as income from business or profession. Depreciation is not allowable.(AY. 2010-11)

Sports Authority of Gujarat v. Dy. CIT (E) (2022)94 ITR 61 (SN)(Ahd)(Trib)

S. 12AA : Procedure for registration –Trust or institution-Education-Providing education and training in field of remote sensing for preservation of environment through optimization of land use and natural resources-Specialized post-graduate degree-Constituted education for charitable purpose-Entitled registration. [S. 2(15)]

Held that the assessee society which is providing education and training in field of remote sensing for preservation of environment through optimization of land use and natural resources and it also provided specialized post-graduate degree courses in that subject in association with a recognized university, it will, therefore, be clear that objectives of assessee constituted education for charitable purpose as understood under section 2(15) of the Act Entitled registration. (AY. 2019-20)

Haryana State Remote Sensing Application Centre. v. CIT (E) (2022) 193 ITD 706 / 94 ITR 10 (SN)(Delhi) (Trib.)

S. 12AB: Procedure for fresh registration-Condition for granting registration-Granting registration for three years is held to be not valid-Direction issued for grant of registration for five years-Matter remanded.[S. 12A(1)(ac)(i), 12AB(1)(c)Form No. 10AC]

Whether section 12AB(1)(a) does not allow any conditions to be imposed for granting registration-Held, yes-Held that provisional registration under section 12AB(1)(c) is to be granted for 3 years to charitable institutions which are yet to start their activities and which apply under section 12A(1)(ac)(iv). However where existing trust registered under section 12A applied for registration under section 12A(1)(ac)(i), it was to be granted registration under section 12AB(1)(a) for 5 years and not provisional registration for 3 years under section 12AB(1)(c). Accordingly the designated authority under section 12AB was to be directed to de novo consider application of assessee-trust under section 12A(1)(ac)(i) and grant registration as per law.Matter remanded (AY. 2022-23)

D K Ajmera Foundation Trust. v.PCIT (2022) 197 ITD 784 (Mum) (Trib.)

S. 12AB: Procedure for fresh registration-Conditional registration is not valid-Guidance attached to the registration was vacated.[S. 12A]

Assessee-charitable trust was granted registration under section 12A. Commissioner while granting registration imposed certain conditions with respect to conduct of trust and circumstances in which registration granted to assessee could be cancelled. On appeal the Tribunal held that conditions with respect to conduct of trust and circumstances in which registration granted to assessee can be cancelled are matters which are regulated by specific provisions of law, and observations of Commissioner, no matter how well intended, could not have independent force of law.Accordingly the condition prescribed in the order is vacated. (AY. 2022-23 to 2026-27)

Bai HirabaiJamshetji Tata Navsari Charitable Institution. v. CIT (2022) 196 ITD 356 (Mum) (Trib.)

S. 12AB: Procedure for fresh registration-Conditional registration-Commissioner's guidance about conduct of assessee could not be construed as legally binding-Condition prescribed by the CIT (E) is vacated. [S. 12A(1)(c)]

Assessee-charitable trust was granted registration under section 12A of the Act. Commissioner while granting said registration imposed certain conditions with respect to conduct of trust and circumstances in which registration granted to assessee could be cancelled.Held that conditions subject to which registration is granted are regulated by specific provisions of law and observations of Commissioner, no matter how well intended, could not have independent force of law. Commissioner's guidance about conduct of assessee which was in substance, conditions attached to registration, could not be construed as legally binding, nor this fact per se would govern, or limit, consequences of lapse in this regard and legal effect of these conditions, as visualised in conditional grant of registration vacated. (AY. 2022-23 to 2026-27)

Bai Navajbai Tata Zoroastrian Girls School. v. CIT (2022) 196 ITD 363 / 219 TTJ 37/ 216 DTR 273 (Mum) (Trib.)

S. 12AB: Procedure for fresh registration-Designated authority was directed to de novo consider the application of assessee trust under section 12A(1)(ac)(i) and grant registration as per law. [S. 12A(1)(ac)(i), Form No 10AAC]

Assessee-trust, registered under section 12AA, made an application in Form No. 10A for registration as per section 12A(1)(ac)(i). DIT (CPC) granted Provisional Registration in Form 10AC to the assessee subject to certain conditions. On appeal, the Tribunal held provisional registration could have been granted only for a period of 3 years to charitable institutions which were yet to start their activities however, assessee in the instant case was already holding a certificate issued under section 12AA of the Act. Further section 12AB(1)(a) deals with the grant of Regular Registration for a period of 5 years and does not authorise Principal Commissioner or Commissioner to impose any conditions for the grant of such registration. Therefore, the application filed by the assessee trust under section 12A(1)(ac)(i) was not properly considered for grant of registration under section 12AB and thus, designated authority under section 12AB was to be directed to de novo consider the application of assessee trust under section 12A(1)(ac)(i) and grant registration as per law.(AY. 2022-23)

SaifeeBurhani Upliftment Trust. v. CIT (E) (2022) 195 ITD 281 (Mum) (Trib.)

S. 12AB: Procedure for fresh registration-Commissioner granted the Registration subject to various conditions-Conditions cannot be imposed as the scheme of the Act

does not visualise the conditions imposed by the Commissioner [S. 2(15)(11), 12, 12A,80G 115TD, 115 TF,Foreign Contribution Regulation Act 2010 (FCRA)]

The assesse trust applied for registration u/s 12A of the Act. CIT(E) granted the exemption subject to certain conditions. The assessee challenged then the said order of Commissioner (E) on the ground that the provisions of the Act do not provide for conditional registration u/s 12A of the Act and in the absence of such provision under the Act CIT(E) was not justified in imposing conditions upon the assessee. On appeal the Tribunal held that the CIT (E) has limited role and can call for documents or information or make inquiries. The CIT(E) cannot decide how and what reasons the Registration has to be cancelled, that too at the time of Registration. The CIT(E) could not have supplemented the conditions by laying down conditions at the time of granting the Registration.

Raj NavajbahiTata Zoroastraian Girls School v. CIT(E) (2022) 141 Taxmann.com 62 (Mum)(Trib)

S. 13 : Denial of exemption-Trust or institution-Investment restrictions-Property held for charitable purposes-Transactions between trustee and related party-No evidence of diversion of funds-Transaction was at arm's length-Denial of exemption is not justified.[S. 11, 12, 13(3)]

Dismissing the appeal of the Revenue the Court held that the assesseeand Pawansut Trading Co Pvt Ltd. were entities covered under sub-section (3) of section 13.However the AO never examined whether the transactions between the assessee and the company were at arm's length. He merely referred to statutory provisions and without further discussion came to the conclusion that disallowance had to be made. The Commissioner (Appeals) not only criticised this approach of the AO but also independently examined whether the transaction was at arm's length. It was found that the rate paid to the related person was the same as paid to the unrelated party. The Tribunal confirmed this view and correctly so. Order of Tribunal affirmed.(AY. 2012-13)

CIT (E) v.ShriRamdoot Prasad Sewa Samiti Trust (2022) 217 DTR 396/ 328 CTR 588/ (2023) 450 ITR 288 (Raj)(HC)

S. 13 : Denial of exemption-Trust or institution-Investment restrictions –Rent charged to trustee less than market rate-Violation of section 13 exemption cannot be denied-Only the income to the extent of violation is liable to tax at maximum marginal rate.[S. 11, 12,12A, 13(1)(c)(ii)]

The AO held that rent charged from one of the Trustee is less than the market rent and rent charged from other tenants in the same premises. The AO denied the exemption u/s 11 on entire income of the Trust on the ground that the assessee has violated the provision of the section 13(1)(c)(ii) of the Act. CIT(A) affirmed the order of the AO. On appeal the Tribunal held that exemption u/s 11 cannot be denied for violation of section 13 of the Act and the disallowance should be restricted to the extent of violation of provisions of section 13(1)(c)(ii) and 13(b) of the Act and the matter was remanded for verification.

On appeal by the Revenue the question raised before the High Court is " Whether on the facts and circumstances of the case and in law the Honourable ITAT is right in holding that the violation of section 13(1)(c) (ii) does not lead to denial of exemption u/s 11 as against the principle laid down by the Hon'ble Apex Court in the case of DIT v. Bharat Diamond Bourse dt. 1 December 2002 (2003) 179 CTR 225 ?"

Following the judgement in CIT(E) v. AudyogikShikhanMndal(2019) 101 taxmann. com 247/ 261 Taxman 12 (Bom)(HC), the question of law raised by the Revenue was dismissed.

Order of Tribunal is affirmed.(ITA.No 683 of 2018 dt 5-8-2022) (AY. 2010-11) (ITA No. 223/Pun/ 2014 dt 28-6-2017)
CIT v. Mukund Bhavan Trust (Bom)(HC) (UR)

S. 13 : Denial of exemption-Trust or institution-Benefit of specified persons-Valuation of rent-Burden to prove inadequacy of rent is on Department-Rent received exceeded valuation adopted by Municipal Corporation for purpose of levying house tax-Merely relying upon the opinion as to rent from property broker firms and websites additions cannot be made-Order of Tribunal is affirmed-Res Judicata-Rule of consistency is followed. [11, 12, 13(2)(b) 13(3)]
The AO was of the view that the assessee had offered substantial concession in rent to the wakf and had let out two properties at a much lower rate as compared to the market rate of rent in lieu of voluntary and corpus donations and therefore, invoked the provisions of section 13(2)(b) read with section 13(3) and denied exemption under sections 11 and 12. The Commissioner (Appeals) allowed the appeals of the assessee. Tribunal held that there was no justification for invoking the provisions of section 13(2)(b) read with section 13(3) by the AO. On appeal dismissing the appeals the Court held that there was no perversity in the findings of the Tribunal that the Department had failed to bring on record any cogent evidence to show that the rent received by the assessee, in the facts of the case, was inadequate, that the material collected from the internet and the estate agents could not be termed as a corroborative piece of evidence and that the rent received by the assessee had exceeded the valuation adopted by the Municipal Corporation for the purpose of levying house tax. Court held that though strictly speaking res judicata does not apply to Income-tax proceedings as each AY. is a separate unit, in the absence of any material change justifying the Department to take a different view of the matter, the position of fact accepted by the Department over a period of time should not be allowed to be reopened unless the Department is able to establish compelling reasons for a departure from the settled position. Relied onCIT v. Excel Industries Ltd (2013) 358 ITR 295 (SC).(AY. 2007-08 to 2010-11)
CIT (E) v. Hamdard National Foundation (India) (2022)443 ITR 348 / 212 DTR 38/ 325 CTR 626/ 286 Taxman 441 (Delhi)(HC)

S. 13 : Denial of exemption-Trust or institution-Investment restrictions-Advance to proprietary concern of wife of managing Trustee-Explanation was not satisfactory-Disallowance was held to be proper.[S. 12AA, 13(1)(c)]
Dismissing the appeal of the assessee the Court held that the purchasing of wood was for the medical college to be established by the assessee. The Tribunal had recorded the finding that even without constructing any building, the assessee had made the advance for purchase of timber and that admittedly that no wood was received by the assessee. Order of Tribunal is affirmed.(AY.2012-13)
Ilahia Trust v CIT (2022) 440 ITR 90/ 209 DTR 355/ 325 CTR 337/ 285 Taxman 312 (Ker)(HC)

S. 13 : Denial of exemption-Trust or institution-Investment restrictions –Advance of interest bearing loans to a company in which the trustees are interested who are managing the trust – Collecting the fees over and above prescribed by the BPUT and the Government – Denial of exemption is affirmed .[S. 11, 12A, 13(1)(d), 13(2)(a),13(2)(c), 80G]
Tribunal held that the asseseee has not produced any evidence as regards the foreign tour expenses incurred by the trustee for the educational programme . The evidence for charging of interest for the advance of amount was not produced . The assessee trust has donated

substantial amount to another Trust , the assessee has not produced the trust deed to demonstrate that the objects are similar and the amount donated was applied for educational activities . Order of lower authorities denying the exemption was affirmed . (AY. 2009 10, 2011 -12)
Nabadigant Educational Trust v .ITO (2022) 219 TTJ 69 (Cuttack)(Trib)

S. 13: Denial of exemption-Trust or institution-Investment restrictions – Specified persons -Using premises – Rendering professional services without charging professional fees – Building owned by specified person used by the Trust without rent – Disqualification not attracted – Denial of exemption is not valid . [S. 11, 12A, 13(1)(c)]
Held that the specified persons used the operation rooms owned by the assessee for private practice without paying any rent or fees for such use. However the specified persons are rendering professional services without charging professional fees . Building owned by specified person used by the Trust without rent . Disqualification not attracted . Denial of exemption is not justified.(AY. 2015-16)
Swasthiyog Pratishthan v. Dy .CIT (E) (2022)97 ITR 47 (SN)(Pune) (Trib)

S. 13: Denial of exemption-Trust or institution – Capitation fees - Voluntary contribution -Denial of exemption is not justified .[S.11, 12A, 13(1)(c) , Karnataka Educational Institutions (Prohibition of capitation Fee) Act, 1984]
Dismissing the appeals the Tribunal held that the assessee enjoyed registration under section 12A of the Act and except for the complaint of the Assessing Officer that the assessee received voluntary contributions, there had been no other charge in so far as allowing exemption under section 11 was concerned. The Commissioner (Appeals) had rightly observed that the conclusions of the Assessing Officer were without any material and that the receipt of capitation fees had not been established nor were there any proceedings against the assessee under the 1984 Act. On the facts, the conclusions drawn by the Commissioner (Appeals) that the assessee could not be denied the benefit under section 11 of the Act could not be said to be erroneous.(AY.2012-13 to 2014-15)
Dy. CIT(E) v. Kammavari Sangham (2022)95 ITR 55 (SN) (Bang) (Trib)

S. 13 : Denial of exemption-Trust or institution-Investment restrictions -Substantial interest -Capital gain - Founder trustee of assessee-trust was holding only 0.83 per cent of aggregate paid-up ordinary share capital of TSL- No violation of provision - Investment in redeemable preferential shares- Entire income of trust shall not become ineligible for exemption , it was to be restricted only to income derived from prohibited investments. [S.11, 12A , 13(1)(d), 13(2)(h), 80G]
Assessing Officer held that when capital gain was invested in TSL, founder trustee of assessee was a Chairman of TSL and thus could have influenced decision of TSL as well as of assessee trust at time of investment and thus, by investing in shares of TSL, assessee had violated provisions of section 13(2)(h) . Tribunal held that the founder trustee of assessee, was holding 3,368 ordinary shares of TSL constituting only 0.83 per cent of aggregate paid-up ordinary share capital of TSL, which was much less than threshold requirement of provision of Explanation-3 to section 13 . Therefore, founder trustee of assessee could not be held to be having 'substantial interest' in TSL and thus, investment by assessee trust in shares of TSL was not affected by vice of section 13(2)(h) of the Act . The assessee trust had made investment in redeemable preferential shares of TSL which Assessing Officer, inter alia, held to be in violation of provision of section 13(1)(d), entire income of trust shall not become ineligible for exemption under section 11. The Tribbunal held that it was to be restricted only to income derived from prohibited investments. The Assessing Officer was to be directed to

grant exemption under section 11 on interest income and income earned from non-prohibited investments by assessee . (AY. 2011-12 to 2014 -15)
ACIT v. Navajibhai Ratan Trust (2022) 213 DTR 25 / 217 TTJ 137 / 140 taxmann.com 157 (Mum)(Trib)

S. 13 : Denial of exemption-Trust or institution-Investment restrictions-Investment in a company-Denial of exemption is valid [S. 11(5), 12A, 13(1)(d)
Held that assessee-society, engaged in organizing golf tournaments in India and abroad, invested 85 per cent of its income for purpose of donation however made investment of remaining amount in a company, since said mode of investment in a company was other than those specified under section 11(5), benefit of exemption claimed under section 11 could not be granted in view of section 13(1)(d) of the Act. Order of AO denying the exemption is affirmed.(AY.2015-16)
Indian Golf Union. v. ITO (E) (2022) 196 ITD 235 (Delhi) (Trib.)

S.14A : Disallowance of expenditure-Exempt income-Without giving finding how much administrative expenditure incurred to earn exempt income-Disallowance not Justified. [R.8D]

Dismissing the appeal of the Revenue the Court held that without giving a finding as to how much administrative expenditure had been incurred to earn the exempt income, disallowance is not justified. Followed South Indian Bank Ltd v. CIT (2021) 438 ITR 1/ 283 Taxman 178 (SC) (AY.2003-04)

CIT v. UTI Bank Ltd. (2022)447 ITR 662/ 219 DTR 528/329 CTR 597 / 289 Taxman 238 (SC)
Editorial : Decision in CIT v. UTI Bank Ltd (2014) 2 ITR-OL 366 ((Guj)(HC), affirmed.

S.14A : Disallowance of expenditure-Exempt income-Failure to record satisfaction-Deletion of addition is justified. [R. 8D]

Held that the AO has neither examined the assessee's account nor recorded the satisfaction about the claim. The order of the Tribunal to delete the addition was affirmed. (AY. 2008-09)

PCIT v. EIH Ltd (2022) 329 CTR 95/ 218 DTR 389 (Cal)(HC)

S.14A : Disallowance of expenditure-Exempt income-No exempt income-No disallowance can be made [R. 8D]
Court held that when the assessee did not have exempt income, no disallowance could be made under section 14A read with rule 8D. (AY. 2012-13, 2013-14, 2012-13 and 2011-12)
Delhi International Airport Ltd v. PCIT (2022) 210 DTR 881 / 325 CTR 361 / 138 taxmann.com 541 (Karn)(HC)

S.14A : Disallowance of expenditure-Exempt income-Not incurred any expenditure in earning dividend income-No disallowance could be made [R. 8D]

Dismissing the appeal of the Revenue the Court held that the assessee-bank had not incurred any expenditure in earning dividend income,hense,no disallowance could be made. (AY. 2007-08)
CIT,LTU v. Canara Bank. (2022) 142 taxmann.com 361 (Karn)(HC)
Editorial : Notice issued IN SLP filed by the Revenue, CIT, LTU v. Canara Bank. (2022) 289 Taxman 82 (SC)

S.14A : Disallowance of expenditure-Exempt income-Recording of satisfaction is mandatory-Disallowance cannot exceed exempt income.[R.8D]
Held that recording of satisfaction is mandatory and disallowance cannot exceed exempt income.(AY. 2012-13)
PCIT v. TV Today Network Ltd. (2022) 289 Taxman 132 / 217 DTR 1/ 328 CTR 204 (Delhi)(HC)

S.14A : Disallowance of expenditure-Exempt income-suo motu disallowance-Failure to give cogent reason for dissatisfaction-Deletion of addition is justified [R. 8D(2)(iii)]
Dismissing the appeal of the Revenue the Court held that theAO had failed to give cogent reason of dissatisfaction regarding computation of disallowance under section 14A and had reached conclusion on mere ground that disallowance made suo motu by assessee was not convincing, addition made was deleted. (AY. 2013-14)
PCIT v. West Bengal Infrastructure Development Finance Corporation Ltd. (2022) 289 Taxman 312 (Cal)(HC)

S.14A : Disallowance of expenditure-Exempt income-Interest on borrowed capital-Investments made from own funds-Disallowance is not justified [R.8D, 260A]
Dismissing the appeal of the Revenue the Court held that investments were made from own funds hence order of the Tribunal deleting the addition was affirmed. *(*AY.2010-11)
PCIT v. PTC India Financial Services Ltd. (2022)449 ITR 309 (Delhi)(HC)

S.14A : Disallowance of expenditure-Exempt income-No expenditure was incurred in earning dividend income-Disallowance cannot be made [R.8D]
Dismissing the appeal of the Revenue the Court held that in order to attract applicability of provision of section 14A there has to be a pay out, i.e. expenditure and since assessee-bank had not incurred any expenditure in earning dividend income, disallowance under section 14A could not be made. (AY. 2009-10)
CIT v. Canara Bank (2022) 141 taxmann.com 566(Karn)(HC)
Editorial :SLP granted to Revenue, CIT v. Canara Bank (2022) 288 Taxman 655 (SC)

S.14A : Disallowance of expenditure-Exempt income-Bank-Shares held as stock in trade-No disallowance of expenditure could be made.[R. 8D]
Dismissing the appeal of the Revenue the Court held that where shares were held by assessee-bank as stock-in-trade and not as investment, main purpose was to trade in those shares and earn profits therefrom and therefore section 14A was not attracted and expenditure could not be disallowed (AY. 2010-11)
PCIT v. Punjab National Bank (2022) 449 ITR 468/ 288 Taxman 127 (Delhi)(HC)

S.14A : Disallowance of expenditure-Exempt income-Not earned any exempt income-Amendment providing for disallowance even if assessee has not earned exempt income is not retrospective-Precedent-Special Leave petition pending before Supreme Court but order of court not stayed-Binding on Tribunal-Interpretation of taxing statutes-

Provision for removal of doubts cannot be presumed to be retrospective if it alters or changes Law as it stood.[R.8D]

Held, dismissing the appeal of the Revenue the Court held that the Tribunal had not erred in deleting the disallowance made by the AO under rule 8D read with section 14A. Though the judgment followed by the Tribunal had been challenged and was pending adjudication before the Supreme Court, there had been no stay of the judgment till date. The order passed in the appeal should abide by the final decision of the Supreme Court in the special leave petition. The Memorandum Explaining the Provisions of the Finance Bill, 2022 ((2022)440 ITR (St.) 226) explicitly stipulates that the amendment made to section 14A of the Income-tax Act, 1961 will take effect from April 1, 2022 and will apply in relation to the assessment year 2022-23 and subsequent assessment years. The amendment of section 14A which is "for removal of doubts" cannot be presumed to be retrospective even where such language is used, if it alters or changes the law as it earlier stood. Relied on Sedco Forex International Drill. Inc. v. CIT (2005) 279 ITR 310 (SC) (AY.2013-14)

PCIT v. Era Infrastructure (India) Ltd. (2022)448 ITR 674/ 216 DTR 191/ 327 CTR 489/ 288 Taxman 384 (Delhi)(HC)

S.14A : Disallowance of expenditure-Exempt income-Dividend income from overseas company in Oman-No tax is payable on said dividend in India-Provision of section 14A is not attracted-DTAA-India-Oman.[S. 2(45), 5,90(2)) R.8D, Art, 25]

Dismissing the appeal of the Revenue the Court held that since the dividend income received by the assessee from OMIDCO, Oman is chargeable to tax in India under the head "Income from other sources " and forms part of the total income, the same is included in taxable income in the computation of income filed by the assessee. However rebate of tax has been allowed to the assessee from the total taxes in terms of Section 90(2) of the Act, read with Article 25 of the Indo-Oman, DTAA and thus dividend earned can be said to be in the nature of excluded income and therefore, the provisions of Section 14A would not be attracted.Referred CIT v. Kribhco(2012) 349 ITR 618 (Delhi)(HC) (ITA No. 3900 of 2022 dt. 11-10-2022) (AY. 2007-08)

PCIT v. IFFFCO Ltd(2022) BCAJ-November-P. 55 (Delhi)(HC)

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

Held that where assessee-company did not have exempt income, no disallowance under section 14A, read with rule 8D, could be made. (AY 2007-08 to 2013-14) (AY. 2011-12)

PCIT v. Delhi International Airport P. Ltd. (2022) 138 taxmann.com 112 (Karn)(HC)

PCIT v. Delhi International Airport P. Ltd. (2022) 138 taxmann.com 541 (Karn)(HC) /(2022) 440 ITR 594 (Karn)(HC)

Editorial: Notice issued in SLP filed by Revenue, PCIT v. Delhi International Airport P. ltd. (2022) 287 Taxman 100 / 113 CCH 271 (SC)

Notice issued in SLP filed by Revenue, PCIT v. Delhi International Airport P. ltd. (2022) 289 Taxman 18 (SC)

S.14A : Disallowance of expenditure-Exempt income-Only those shares which had yielded dividend income in year under consideration to be considered [R.8D]

Held that machinery provision under rule 8D could be applied only with regard to shares which yielded dividend income in year under consideration. Order of Tribunal affirmed. AY. 2011-12, to 2013-14))

PCIT v. Shalimar Pellet Feeds Ltd. (2022) 287 Taxman 134/ 213 DTR 345/ 326 CTR 595 (Cal.)(HC)

S.14A : Disallowance of expenditure-Exempt income-No exempt income earned during relevant year-No disallowance can be made [R. 8D]

Held thatthere was no exempt income earned by it during relevant assessment years hence no disallowance can be made. (AY. 2012-13 2013-14)

PCIT (Cent.) v. R.M. Commercial (P) Ltd. (2022) 287 Taxman 194 /113 CCH 348 (Cal.)(HC)

S.14A : Disallowance of expenditure-Exempt income-Failure to record satisfaction-Invoking rule 8D is not justified-Disallowance proposed by the assessee is affirmed [R. 8D]

Held that where AO failed to record its satisfaction with regard to claim of assessee that it had incurred any expenses in earning exempt income the disallowance under section 14A by invoking rule 8D made by AO was unjustified, however, disallowance to extent of Rs. 1.61 lakhs which was proposed by assesseeitself was up held. (AY. 2009-10)

Essilor India (P) Ltd v. Dy. CIT (2022) 286 Taxman 385 (Karn.)(HC)

S.14A : Disallowance of expenditure-Exempt income-Only expenses proportionate to earning of exempt income could be disallowed [R. 8D]

Dismissing the appeal of the Revenue the Court held that only expenses proportionate to earning of exempt income could be disallowed. (AY. 2011-12)

PCIT v. Karnataka State Financial Corporation Ltd(2021) 127 taxmann.com 115 (Karn)(HC)

Editorial : Notice issued in SLP filed against order of High Court, PCIT v. Karnataka State Financial Corporation Ltd. (2022) 286 Taxman 356 (SC)

S.14A : Disallowance of expenditure-Exempt income-AO not considering disallowance made voluntary by assessee-Matter remanded to the Tribunal [S. 254(1) R. 8D]

The Tribunal while remanding the matter to the AO had particularly directed consideration of the investment which yielded dividend income to the assessee for computing the disallowance under section 14A by applying rule 8D. The Tribunal was to consider whether the AO had followed the mandate under section 14A(2) with regard to the recording of satisfaction by the AO as mandated thereunder in the light of the decisions which had laid down the procedure to be adopted by the AO. The relief which was granted to the assessee with regard to the interest portion should remain intact for all the three assessment years 2008-09, 2009-10 and 2011-12. Matter remanded.(AY.2008-09, 2009-10, 2011-12)

Kesoram Industries Ltd. v. PCIT (2022)441 ITR 648/ 211 DTR 57/ 326 CTR 212 / 286 Taxman 106 (Cal) (HC)

S.14A : Disallowance of expenditure-Exempt income-No exempt income earned during the year-No disallowance can be made-When no disallowance is made addition cannot be made to book profit [S. 115JB, R.8D]

Held that High where there was no exempt income earned by assessee-company during year, there could not be any disallowance of expenditure under section 14A read with rule 8D. Court also held that since disallowance under section 14A itself was deleted, there was no question of adding same back under section 115JB of the Act (AY. 2015-16)

PCIT v. Adani Wilmar Ltd. (2021) 133 taxmann.com 443 (Guj) (HC)

Editorial: Notice is issued in SLP filed by the revenue; PCIT v. Adani Wilmar Ltd. (2022) 285 Taxman 547 (SC)

S.14A: Disallowance of expenditure - Exempt income – No exempt income during the relevant year - Disallowance not warranted. [R.8D]
The Tribunal Held, that when no exempt income was claimed by the assessee in its computation of income no disallowance under section 14A was warranted.(AY. 2012 -13)
ACIT v. Amrutlal Babaldas Patel (2022)98 ITR 131 (Surat) (Trib)

S.14A: Disallowance of expenditure - Exempt income –No exempt income - Amendment with effect from April 1, 2022 the Finance Act, 2022with retrospective effect- Matter remanded.[R. 8D]
With effect from April 1, 2022 the Finance Act, 2022 had introduced an Explanation, which made it clear that the provisions of section 14A with respect to the disallowance shall apply and shall be deemed to have always been applied even in cases where the assessee has not earned any exempt income. Therefore, in view of the amendment the Tribunal remanded the matter to the Assessing Officer (AY.2007-08, 2010-11 to 2014-15).
Dy. CIT v. Wind World India Ltd. (2022)98 ITR 22 (Mum)(Trib)

S.14A: Disallowance of expenditure - Exempt income- Interest free funds- Dividend through RTGS- Directed to verify calculation vis a vis calculation accepted in earlier years and restrict disallowance accordingly. [R.8D]
Held, that the assessee had made the investment in the securities out of common funds, the assessee also had non-interest bearing funds, and there was reduction in the investment during the year under consideration. The assessee also claimed to have received the dividend income through real time gross settlement. Directed to verify calculation vis a vis calculation accepted in earlier years and restrict disallowance accordingly. (AY. 2011 -12)
Oswal Woollen Mills Ltd. v .Add. CIT (2022)98 ITR 521 (Chad) (Trib)

S .14A : Disallowance of expenditure - Exempt income - Share application money – Pending for allotment – Provisions of section 14A cannot be invoked .[R.8D]
Held that the amount paid as share application money pending allotment of shares cannot be regarded as an investment in shares or any asset which is yielding tax-free dividend income; since assessee did not receive any dividend in the relevant years, the provisions of s. 14A cannot be invoked.(AY.2010-11 to 2015-16)
Dy. CIT v. GVK Jaipur Expressway (P) Ltd. (2022) 216 TTJ 540 (Jaipur)(Trib)

S.14A : Disallowance of expenditure - Exempt income - Disallowance can be made only in respect of interest payments from those investments which the dividend income was earned.[R.8D(2)(iii)]
Held that the loan taken by the assessee was to a specific purposes and the assessee had sufficient own funds in the form of share capital and surplus funds to make the investments. The disallowance was directedto be made only in respect of interest payments from investments which the dividend income was earned. (AY. 2012-13)
Dy. CIT v. Kanoria Chemicals & Industries Ltd. (2022) 215 TTJ 1003 (Kol)(Trib)

S .14A : Disallowance of expenditure - Exempt income – No clear findings – Accounts not rejected – Disallowance was vacated .[R. 8D(2)(iii]

Held that in the absence of clear finding by the AO with reference to the assesse's accounts as to how the other expenditure claimed by the assessed in respect of its non exempt income were related to its exempt income, disallowance made by the AO was deleted . (AY .2016 -17)

Care Ratings Ltd. v. ACIT (2022) 215 TTJ 28 / 210 DTR 123 (Mum)(Trib)

S.14A : Disallowance of expenditure-Exempt income- Disallowance cannot exceed exempt income.[R.8D]

Held that disallowance cannot exceed exempt income .(AY. 2009-10 to 2012-13)

Dy. CIT v. Mahendra Brothers Exports Pvt. Ltd. (2022) 99 ITR 537 (Mum)(Trib)

S .14A : Disallowance of expenditure - Exempt income - Failure to demonstrate that borrowed funds on which interest paid was not utilised for making investment – disallowance was affirmed [R.8D(2)]

Held that the assessee had to establish by necessary fund flow statements that borrowed funds on which interest paid were not utilised for the purpose of making investments which yielded tax-free income. Disallowance was affirmed . (AY. 2009-10, 2010-11)

Karnataka State Beverages Corporation Ltd. v. ACIT (2022) 99 ITR 325 (Bang) (Trib)

S .14A : Disallowance of expenditure - Exempt income – Interest- Disallowance to be worked out on basis of net interest. [S.8D(2)(ii)]

Held that the the expenditure by way of interest paid by the assessee would be after reducing the taxable income earned during the financial year. Therefore, the Assessing Officer was to work out the disallowance under section 14A read with rule 8D of the Income-tax Rules, 1962 on the basis of the net interest under rule 8D(2)(ii) of the Act.(AY.2014-15)

Bothra Financial Services v. ITO (2022)100 ITR 452 (Delhi) (Trib)

S .14A : Disallowance of expenditure - Exempt income – No exempt income received during the year – Disallowance cannot be made – Amendment is from AY. 2022 -23 , prospective in nature .[R.8D]

Held, that the assessee was not in receipt of any exempt income on the investments made by it. The Finance Act, 2022 had amended section 14A wherein it was stated that irrespective of whether the assessee is not in receipt of exempt income, disallowance under section 14A can be made. However, the amendment was prospective and applied for and from the assessment year 2022-23 onwards. Therefore, no disallowance under section 14A was called for.(AY.2013-14)

Muthoot Vehicle and Asset Finance Ltd. v. ACIT (2022)100 ITR 185 (Cochin)(Trib)

S .14A : Disallowance of expenditure - Exempt income – Not filing details – Investment in subsidiary – Disallowance is proper . [R.8D]

Held, that no evidence in support of its claim was filed and in the absence thereof the order of the Commissioner (Appeals) was justified **.** (AY.2013-14, 2014-15)

Dhanada Corporation Ltd. v. ACIT (2022)100 ITR 10 (SN) (Pune) (Trib)

S.14A : Disallowance of expenditure - Exempt income -Disallowance can be made only on basis of investments which yielded tax free income. [R. 8D]
Held that disallowance under section 14A was to be made only on basis of investments which yielded tax free income . (AY. 2013-14)
Zuari Investments Ltd. v. ITO (2022) 209 DTR 313 / 215 TTJ 515 / 139 taxmann.com 92 (Delhi) (Trib)

S.14A : Disallowance of expenditure - Exempt income - Disallowance was worked on proportionate basis - Matter remanded.[S. 10(38), R. 8D]
Following earlier order of Tribunal in assessee's own case for assessment year 2010-11,the Tribunal directed the Assessing Officer to verify calculation made by assessee vis a vis calculation made in earlier year which were accepted by Tribunal and restrict disallowance accordingly after reducing sum already disallowed by assessee .(AY. 2011 - 12
ACIT v. Nahar Industrial Enterprises Ltd. (2022) 219 DTR 73 / 219 TTJ 544 / 99 ITR 562 (Chd)(Trib)
ACIT v. Nahar Spinning Mills Ltd (2022) 219 DTR 73 / 219 TTJ 544/ 99 ITR 562 /142 taxmann.com 52 (Chd)(Trib)
ACIT v. Oswal Woollen Mills Ltd. (2022) 219 DTR 73/ 219 TTJ 544 /99 ITR 562 / 142 taxmann.com 52 (Chd)(Trib)

S .14A: Disallowance of expenditure - Exempt income –No e exempt income for relevant assessment year – No disallowance can be made. [R.8D]
Held that the assessee had no exempt income for the relevant assessment year. The order of CIT (A) deleting the addition was affirmed.(AY.2012-13).
Dy. CIT v. Jagson International Ltd. (2022) 97 ITR 176 (Delhi) (Trib)

S .14A: Disallowance of expenditure - Exempt income– Administrative expenses- Suo motu disallowance- Order of CIT(A) deleting the addition made by the Assessing Officer was affirmed.[R. 8D]
Dismissing the appeal of the Revenue the Tribunal held that the disallowance deserved to be upheld only to the extent of the working since the assessee suo motu had provided a working restricting the disallowance. (AY.2007-08)
ACIT v. United Shippers Ltd. (2022) 97 ITR 94 (Mum) (Trib)

S.14A : Disallowance of expenditure - Exempt income – Apportionment of interest - Not recording of satisfaction [R. 8D(2)(iii)]
Held that the AO has not recorded any finding to establish nexus of borrowed funds with the investments made by the assessee, no disallowance of interest could be made as satisfaction was not recorded . (AY. 2008-09)
ACIT v. J. K. Fenner (India) Ltd. (2022) 220 TTJ 595 (Chennai)(Trib)

S. 14A: Disallowance of expenditure - Exempt income – Co -Operative Society- Provision is not applicable . [S.80P]
The Tribunal held that the assessee was covered by the Central Board of Direct Taxes Circular No. 18 of 2015 ([2015) 378 ITR (St.) 39), viz., co-operative societies and banks. The assessee was a cooperative society which was engaged in the business of providing financial assistance to its members and was eligible for deduction under section 80P of the

Act. The provisions of section 14A could not be applied to the assessee co-operative society, and accordingly, the Assessing Officer was directed to delete the disallowance made under section 14A of the Act. (AY. 2008-09, 2012-13 to 2014-15)
Steel Authority of India Employees' Co-Operative Credit Society Ltd. v. ACIT (2022)96 ITR 599 (Kol) (Trib)

S.14A : Disallowance of expenditure - Exempt income - Determining disallowance at 0.5 Per Cent. of average value of investments — Disallowance in accordance with law .[R.8D]
Held that the assessee had not disputed the applicability of rule 8D of Rules for computing disallowance of expenses under section 14A of the Act. The Assessing Officer had determined the disallowance under section 14A read with rule 8D of the Income-tax Rules, 1962 at 0.5 per cent. on the average value of investments. The disallowance determined by the Assessing Officer was in accordance with law.(AY.2008-09 to 2010-11)
Rane Engine Valves Ltd. v .Dy. CIT (2022)95 ITR 5 (SN)(Chennai)(Trib)

S.14A : Disallowance of expenditure - Exempt income - No exempt income earned during year -Failure by Assessing Officer to record satisfaction - Disallowance not permissible. [S. 14A(2), R.8D]

Held that the Assessing Officer had merely on the basis of the investment shown in the annual accounts of the assessee invoked the provisions of section 14A read with rule 8D of the Income-tax Rules, 1962 and issued notice to the assessee. He merely said that as the investment decision were very complex the assessee should have incurred certain expenditure. This could not satisfy the requirement of section 14A(2) of the Act. There was no reference to the accounts of the assessee. Accordingly, the Assessing Officer had failed to record any satisfaction prior to invoking the provisions of rule 8D . The disallowance under section 14A of the Act deleted in view of the absence of proper satisfaction recorded by the Assessing Officer.(AY.2015-16)
Wanbury Ltd. v. Dy. CIT (2022)95 ITR 87 (SN)(Mum) (Trib)

S.14A : Disallowance of expenditure-Exempt income-Dividend from his personal investments-Deletion of addition is justified.[R. 8D]
Assessee earned dividend income from his personal investments but not from business assets. The AO made disallowance under section 14A read with rule 8D. CIT (A) deleted the addition. Order of CIT(A) is affirmed.(AY. 2013-14)
ACIT v. AnilkumarPhoolchand Sanghvi. (2022) 197 ITD 439 (Pune) (Trib.)

S.14A : Disallowance of expenditure-Exempt income-Disallowance is restricted to extent of considering only those investments which yielded exempt income-Notional interest-Matter remanded for verification [S. 14A, **R. 8D]**
Held that disallowance under section 14A is to be restricted to extent of only those investments which yielded exempt income, for which assessee had furnished a detailed working. Addition on notional interest-Matter remanded for verification. (AY. 2010-11)
Yamini Khandelwal. (Smt.) v. ACIT (2022) 197 ITD 520/ 220 TTJ 485 / 219 DTR 201 (Kol) (Trib.)

Suraj Khandelwal v. ACIT (2022) 197 ITD 520/ 220 TTJ 485/ 219 DTR 201 (Kol) (Trib.)

S.14A : Disallowance of expenditure-Exempt income-No exempt income-Disallowance cannot be made-Prior to 1-4-222 [R. 8D]

Held that prior to 1-4-2022, no disallowance could be made under section 14A with respect to expenditure incurred by assessee to earn exempt income, when no exempt income was earned during relevant assessment year. (AY. 2016-17, 2017-18)

ACIT v. Bajaj Capital Ventures (P.) Ltd. (2022) 196 ITD 24/ 216 DTR 33/ 218 TTJ 832 (Mum) (Trib.)

S.14A : Disallowance of expenditure-Exempt income-Failure to record dissatisfaction-Addition was deleted [R. 8D(2)(iii)]

Assessee received exempt dividend income but it had not offered any disallowance of expenditure under section 14A contending that except for issuing of cheques in favour of funds and accounting statements in its books of account, no other activity was done by company qua its aforesaid exempt income yielding investments and thus, no cost/expenses could be attributed towards earning of exempt income. AO held that some part of expenditure would have been incurred by assessee towards earning of exempt dividend income and he computed disallowance as per methodology contemplated under rule 8D(2)(iii) of the Act. Held that sinceAO had failed to record his dissatisfaction as regards claim of assessee that no part of expenditure claimed as deduction could be attributed towards earning of exempt dividend income, he had wrongly assumed jurisdiction under section 14A. Addition was deleted.(AY. 2009-10)

Infrastructure Logistics (P.) Ltd. v. JCIT (2022) 196 ITD 153 (Panaji) (Trib.)

S.14A : Disallowance of expenditure-Exempt income-Dividend and interest-Did not make suo motu disallowance-Matter remanded [S. 10(34), R. 8D(ii)]

Assessee had earned certain amount of exempt income in form of dividend and interest from NHB bonds. It claimed same under section 10(34) but did not make any suo motu disallowances under section 14A of the Act.AO computed disallowance under section 14A by invoking rule 8D and determined disallowance of interest and other expenses. Held that since assessee maintained common set of books of account for taxable and exempt income, possibility of incurring common expenditure for both segment could not be ruled out and, therefore, AO was justified in invoking rule 8D to compute disallowance however with regard to interest disallowance under rule 8D(2)(ii), since assessee had not filed any cash flow statement to prove availability of own funds when those investments were made during relevant year, matter was to be remanded back to file of AO to verify facts with regards to availability of own funds to explain investment made in shares and securities which yielded exempt income. (AY. 2011-12 to 2016-17)

Sundaram BNP Paribas Home Finance Ltd. v. DCIT (2022) 196 ITD 198 (Chennai) (Trib.)

S.14A : Disallowance of expenditure-Exempt income-Explanation inserted by Finance Act, 2022 with effect from 1-4-2022 Provisions shall apply whether or not exempt income has accrued, arisen or received-Clarificatory in nature and applicable retrospectively.[R. 8D]

Explanation inserted by Finance Act, 2022 to section 14A with effect from 1-4-2022 providing that provisions shall apply whether or not exempt income has accrued, arisen or received, is clarificatory in nature and thus, applicable retrospectively. Parliament has brought in Explanation to section 14A to remove prevailing doubts about interpretation of provisions of section 14A and to overcome interpretation given by various High Courts

regarding applicability of provisions of section 14A and to make intention of legislation clear and to make it free from any misinterpretation. (AY. 2009-10, 2012-13,2014-15)
ACIT v. Williamson Financial Services Ltd. (2022) 196 ITD 422 / 218 TTJ 649/ 216 DTR 137 (Guwahati) (Trib.)

S.14A : Disallowance of expenditure-Exempt income-Disallowance is to be restricted to extent of exempt income earned during the year. [R.8D]
Held that disallowance under section 14A is to be restricted to extent of exempt income earned during the year. (AY. 2018-19)
K. Raheja (P.) Ltd. v. DCIT (2022) 196 ITD 607 (Mum) (Trib.)

S.14A : Disallowance of expenditure-Exempt income-No expenditure incurred-Disallowance cannot be made [R.8D]
Held that where funds have been utilized for investment without incurring any expenses, no disallowance under section 14A is called for. (AY. 2011-12)
Security Printing & Minting Corporation of India Ltd. v. ACIT (2022) 194 ITD 641 (Delhi) (Trib.)

S.14A : Disallowance of expenditure-Exempt income-Only those investments, which have yielded exempt income has to be considered for the purpose of computing average value of investments for computing the disallowance.[R.8D]
Tribunal placing reliance on order of Special Bench of the Tribunal in the case of ACIT v. Vireet Investment Pvt. Ltd 2017) 165 ITD 27 (SB) (Delhi) (Trib) held that only those investments, which have yielded exempt income has to be considered for the purpose of computing average value of investments for computing disallowance under, rule 8D. (AY. 2009-10)
Dell International Services India (P.) Ltd v. JCIT (2022) 94 ITR 247 (Bang)(Trib)

S.14A : Disallowance of expenditure-Exempt income-Exempt income not received during year-No disallowance can be made [R.8D]
Held that when the assessee was not in receipt of exempt income during year, no disallowance warranted. (AY. 2015-16, 2017-18, 2019-20)
Lumino Industries Ltd. v.ACIT (2022) 94 ITR 675 / 215 TTJ 62/ 213 DTR 290 (Kol)(Trib)

S.14A : Disallowance of expenditure-Exempt income-Disallowance cannot exceed the exempt income [R.8D]
Held, that since the assessee had earned exempt dividend income of Rs. 2,48,167, the Commissioner (Appeals) was right in restricting the disallowance to that extent. (AY. 2013-14)
ACIT v. Silver Jubilee Motors Ltd. (2022) 94 ITR 19 (Trib) (SN)(Pune) (Trib)

S.14A : Disallowance of expenditure-Exempt income-Disallowance cannot exceed exempt income. [R.8D]
Held that the disallowance under section 14A could not exceed the exempt income.(AY.2015-16)
BCL Secure Premises Pvt. Ltd. v. ACIT (2022)93 ITR 267 (Delhi)(Trib)
ITO v. MVL Credit Holdings And Leasing Ltd. (2022) 93 ITR 533 (Delhi) (Trib)

S.14A : Disallowance of expenditure-Exempt income-Entire expenditure cannot be disallowed [R.8D]

Held that the CIT(A) is justified in holding that only the expenditure incurred for earning of exempt income can be disallowed. (AY. 2011-12)

Dy.CIT v. Acquire Services Pvt Ltd (2022) 93 ITR 613 (Delhi)(Trib)

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

Held that there was no exempt dividend income received by the assessee. Therefore there could not be any disallowance under the provisions of section 14A of the Act read with rule 8D of the Rules.*(*AY.2014-15)

ACIT v.Kalthia Engineering and Construction Ltd. (2022)93 ITR 30 (SN) (Ahd) (Trib)
Mll Logistics P. Ltd. v. ACIT (2022) 194 ITD 787 / 93 ITR 513 (Mum) (Trib)

S.14A : Disallowance of expenditure-Exempt income-Interest-Sufficient funds-Disallowance of interest is not valid [R. 8D]

Held that the disallowance under section 14A of the Income-tax Act, 1961 read with rule 8D of the Income-tax Rules, 1962 was not justified in view of the fact that the assessee had demonstrated that it had sufficient funds for making investment which yielded exempt income. (AY.2005-06, 2013-14)

Dy. CIT v.Navratna Organizers and Developers P. Ltd. (2022)93 ITR 14 (SN)(Ahd)(Trib)

S.14A : Disallowance of expenditure-Exempt income-Interest-Own capital and free reserves-More than investments-No disallowance is to be made [R. 8D]

Held that own capital and free reserves of assessee were much more than investment made by assessee which was yielding exempt income to it, a presumption would arise that investment was made out of interest free funds generated or available with company. No disallowance under section 14A is to be made (AY. 2011-12)

DCIT v.Godawari Power &Ispat Ltd. (2022) 193 ITD 869 (Raipur) (Trib.)

S.14A : Disallowance of expenditure-Exempt income-Only the value of investments which yielded exempt income during year.[R. 8D (iii]

Tribunal held that only those investments are to be considered for computing average value of investment which yielded exempt income during year.(AY. 2008-09)

ShivnarayanNemani Shares & Stock Brokers (p) Ltd v. DCIT (2022) 192 ITD 50 (Mum) (Trib)

S.14A : Disallowance of expenditure-Exempt income-Disallowing the expenditure without recording satisfaction is held to be not justified [R. 8D]

Tribunal held that disallowing the expenditure without recording satisfaction is not justified.(AY. 2010-11)

Ashok Kirtanlal Shah. v. ACIT (2022) 192 ITD 193 (Mum) (Trib.)

S. 15 : Salaries-Managing director-Professional fees cannot be assessed as salary [S. 28(i), 44AB, 194J]

Held that the assessee maintained regular books of account and his books of account were audited under section 44AB. Since there was no restriction under law for appointing

consultant/professional as managing director, merely because assessee worked as managing director, said professional fee could not be treated as salary (AY. 2013-14)
Jayaram Rangan. v. ACIT (2022) 194 ITD 666 (Chennai) (Trib.)

S. 17(2) : Perquisite-Salary-Valuation-Undertaking owned or Controlled by Central Government-Not Central Government-Cannot claim valuation of perquisites under Rule applicable to Government employees. [S. 15, R. 3. Art, 12, 136]
Held, dismissing the petition, that even if the assessee might be considered a State instrumentality within the definition of article 12 of the Constitution of India, its employees could not be treated at par with Central or State Government employees under Table 1 of rule 3 of the Income-tax Rules, 1962. Merely because the assessee might have adopted the Central Government Rules and pay-scales, etc., by that itself, it could not be said that the assessee was a Central or State Government.The court dismissed the assessee's special leave petition giving it liberty to file a review petition before the High Court on points other than that concluded, namely, whether or not the assessee could be treated at par with the Central or State Government employees for the purpose of section 17.(AY. 2010-11)
Indian Institute of Sciencev.Dy. CIT (2022) 446 ITR 418/ 217 DTR 457 / 328 CTR 621/ 289 Taxman 13 (SC)
Editorial : Indian Institute of Science v. DY. CIT (2021) 438 ITR 400 (Karn) (HC) affirmed.

S. 22: Income from house property-Business income-Lease of immovable property Lease agreement as owner of immovable property and not as owner of a business asset-Income assessable as income from house property [S. 28(i)]
Dismissing the appeal the Court held that the agreement dated June 24, 1998, showed that the arrangement was made or entered into more to adjust the outstanding liability of the assessee to KSBC. The clauses in the agreement referred to an owner of property transferring leasehold rights. The additional advantage or reduction in overheads was not the deciding factor for meriting a claim as business income. The crux of the matter is whether the object of the transaction, whether the assessee continues to do business or not, chances of revival, nature of asset in which third-party enjoyment right is created for consideration are relevant and essential. Looking at the circumstance stated by the assessee, it was clear that the assessee was doing the same business before the subject AY and continued to do the same business of manufacture of Indian made foreign liquor. The assessee had let several portions of available building on lease to different individuals and entities. Parting with possession of the godown, particularly in the circumstances of the case, was more as an owner of a business asset, but not for exploiting a commercial asset. The AO, the appellate authority, and the Tribunal had considered the case in the right perspective and disallowed the claim of rental income as business income. The Tribunal and the authorities had rendered available findings of fact on the assessee's claim of rental income as business income and rejected the claim. No ground warranting interference was made out. Assessment as income from house property was justified. Referred Sultan brothers Private Ltd v. CIT (1964) 51 ITR 353 (SC)
Travancore Sugars and Chemicals Ltd. v. CIT (2022) 444 ITR 371 / 212 DTR 385/ 326 CTR 137/ 286 Taxman 657 (FB) (Ker)(HC)

S. 22 : Income from house property – Income from other sources -Ownership was with the assessee despite the sale of property – Rental income assessable as Income from house property – Entitle to statutory deduction of 30%. [S. 24(a), 56]
Held that the assessee continues to be the owner of premises despite sale thereof, the rental income therefrom is assessable under the head 'Income from house property and

consequently, assessee is entitled for statutory deduction@ 30 per cent under S. 24(a). (AY.2003-04)
Dy. CIT v. Piramal Enterprises Ltd. (2022) 216 TTJ 802 (Mum)(Trib)

S. 22: Income from house property - Main object warehousing and supply-chain solutions — Earning of rental income sans any amenities to tenants — Not an engagement in systematic business activity of letting out properties — Income to be treated as income from house property.[S. 24(a), 28(i)]
The Tribunal held that the assessee's main object was warehousing and supply chain solutions, which was different from letting out properties on rent. The assessee did not render any amenities to the tenant so as to hold the rental income under the head "Income from business or profession." The Assessing Officer had not brought on record any evidence to substantiate his view that the assessee was in the business of letting out properties on rental income as a systematic business activity. As a result, such rental income could not be assessed under the head income from business. (AY. 2014-15)

ACIT v. S. N. Damani Infra Pvt. Ltd. (2022)96 ITR 707 / 211 DTR 105 (Chennai)(Trib)

S. 22 : Income from house property -Security deposit-Notional addition – Matter remanded.[S.24(a)]
Held that the decision of the jurisdictional High Court in Tip Top Typography was not brought to the attention of the Tribunal when it passed orders for the assessment year 2012–13 and accordingly the addition was upheld on the basis of security deposit received by the assessee. The decision rendered by the jurisdictional High Court was thus binding on the Tribunal. Issue remanded to the file of the Assessing Officer for adjudication de novo in light of the decision of the jurisdictional High Court.(AY.2012-13)
Deena Asit Mehta v .Dy. CIT (2022)95 ITR 60 (SN) (Mum.)(Trib)

S. 22 : Income from house property-Business income-Rental Income earned by assessee by renting out its warehouse building, who is not in business of letting out properties, cannot be assessed as income from business or profession, but has to be assessed as income from house property. [S. 28(i)]
The assessee company, whose main object was to provide warehouse and supply chain solutions, rented out its owned building, and declared the rental income as Income from House Property. AO, based on ancillary objects, and also considering the main object, came to conclusion that since the primary source of income is the business of providing warehouse property on rent, and the business is not of simple letting out of property to derive rental income, rental income is to be taxed as Income from business. CIT(A) disagreed with the views of AO and taxed the income under the head Income from House property, on ground that assessee is into simple letting out premises on monthly rental without providing any amenities, which is not in the nature of systematic business activity. On Appeal Tribunal, held that the CIT(A)'s direction to assess Income derived from letting out property under the head Income from house property is upheld. (AY.2014-15)
ACIT.v. S N Damani Infra (P) Ltd (2022) 216 TTJ 252 (Chennai)(Trib.)

S. 22 : Income from house property-Annual letting value of rented property-Municipal rateable value much less than rental income shown-Addition cannot be made on guess work.[S. 23]
Held, that the AO could not determine a notional rent based on estimation or guess work. The assessee had furnished the municipal rateable value which was much less than the rental

income offered. Further, the AO had not brought any concrete evidence on record to demonstrate that the parties had concealed the real position. Therefore, no further addition could be made to the rental income by computing a notional rent based on the interest-free security deposit. The addition made by the AO was to be deleted.*(*AY.2013-14)
Mll Logistics P. Ltd. v. ACIT (2022)93 ITR 513 (Mum) (Trib)

S. 23 : Income from house property - Annual value - Unsold units in commercial complex held as stock-in-trade- Notional value cannot be assessed – Reassessment beyond four years held to be not valid- Reassessment with in four years and assessment completed under section 143(1)- Reassessment is valid. [S. 22, 23(5), 24(a), 143(1), 143(3), 147, 148]
Held that notional ALV of the units in commercial complex held as stock-in-trade is not chargeable to tax as income from house property in the case of assessee-builder since the property is not constructed for letting out but the same is held for sale and has been actually sold out on subsequent dates. Further, the builder takes booking advance from several parties against the units and is under obligation to deliver possession of unsold stock to the concerned parties and such units cannot be let out by the builder. Sub S. (5) of s 23 was inserted by Finance. Act, 2017 w.e.f. 1st April, 2018. Amended provision of sub-s. (5) of S. 23 allows relaxation from taxability of ALV on unsold stock for the period up to two years from the end of the financial year in which the certificate of completion of construction of the property is obtained. On the facts of the case the construction of the property was completed on 31st Aug, 2009. Therefore, even if the relaxation period up to two years as envisaged in S 23(5) is considered, the ALV on unsold stock cannot be taxed for asst. yrs. 2010-11 and 2011-12. Reassessment beyond four years held to be not valid. Reassessment with in four years and assessment completed under section 143(1)- Reassessment is valid . (AY. 2010 - 11 , 2011 -12)

Krishna Build Home (P) Ltd. v. ITO (2022) 219 TTJ 165 (Jaipur)(Trib)

S. 23 : Income from house property-Annual value-Vacancy allowance-Property vacant for whole or any part of previous year-Vacancy allowance is allowable [S. 22, 23(1)(c)]
Assesseehas let out the property from assessment years 2008-09 to 2011-12, however, same was vacant due to non-availability of tenants. The AO computed the annual value of property under section 23(1)(a) of the Act. Held that if property is let out for two or more years and was vacant for whole or any part of previous year, then said property provision of section 23(1)(c) would be applicable. AO was directed to delete the addition. (AY. 2013-14)
Asfa Technologies & BPO (P.) Ltd. v. ITO (2022) 197 ITD 323 (Chennai) (Trib.)

S. 23 : Income from house property-Annual value-Vacancy allowance-Only an intention to let out a property coupled with efforts to let out is sufficient to come within purview of section 23(1)(c)-As lease rental received was nil, addition made by Commissioner (Appeals) on basis of Annual Letting Value (ALV) under section 23(1)(a) was to be deleted. [S. 22, 23(1)(a), 23(1)(c)]
Assessee and two other co-owners executed a registered lease deed on 1-2-2016. As per lease deed, possession of leased premises was given to lessee on 1-6-2016 and lease rentals were to be paid from date of handing over building to lessee.AO held that rental income of property commenced on 1-2-2016 itself but same had not been offered to tax, and therefore, same was added back to returned income of assessee.Commissioner (Appeals) enhanced addition made by AO by working out income from house property on basis of Annual Letting

Value (ALV) under section 23(1)(a) of the Act. Held that for period between 1-2-2016 and 1-6-2016 assessee was making demised property operational and further, lease rental received by assessee from 1-6-2016 was disclosed under head 'Income from house property' for subsequent assessment year 2017-18 onwards and lease rental received for relevant assessment year was nil.Since the property was actually let out during relevant financial year, section 23(1)(c) would be applicable instead of section 23(1)(a) and addition made by Commissioner (Appeals) on basis of Annual Letting Value (ALV) was to be deleted. (AY. 2016-17)

Yash Vardhan Arya. v. ITO (IT) (2022) 196 ITD 276/ 97 ITR 5(SN) (Bang) (Trib.)

S. 23 : Income from house property-Annual value-Mixed use charges-Not property tax-Not allowable as deduction [S. 22]

Assessee claimed that the annual mixed-use charge was a tax that was payable for making commercial use of property and payment of tax was an allowable expense from rental income as per proviso under section 23(1) of the Act. The AO disallowed the deduction. On appeal, the Tribunal held that the collection of mixed-used charges was for purpose of regularizing usage of residential premises for certain commercial purposes which cannot be construed as tax levied by the local authority and further, collection of annual mixed-used charges would not make any difference in annual let out the value of the property, therefore, same was not allowable as per proviso under section 23 (1) of the Act. (AY. 2014-15)

Amar Chand Garg. v.ACIT (2022) 195 ITD 15 (Delhi) (Trib.)

S. 23 : Income from house property-Builder stock in trade-Deemed notional rent in respect of unsold flats held as stock in trade. The addition was deleted.[S. 22, 23(5), 28(1)]

Assessee, a builder and developer, had certain flats unsold at end of the year, i.e., as on 31-3-2013. The AO held that the rental income of such unsold flats was taxable under the head income from house property. Commissioner (Appeals) held that the rental income of such flats unsold was chargeable to tax as business income. On appeal, the Tribunal held that since the assessee did not earn any actual rental income from letting out of flats and there is no provision under Chapter IV-D that can envelope above rental income within its fold, Commissioner (Appeals) was not justified in taxing rental income of such flats unsold as business income. (AY. 2013-14)

K.D. Construction Unit I v. ITO (2022) 195 ITD 12 (SMC)) (Pune) (Trib.)

S. 23 : Income from house property-Annual value-Notional rent-Commercial property-Remained vacant during the whole of the previous year-Notional addition cannot be made [S. 22, 23(1)(c)]

Held that as the commercial property remained vacant during the whole of the previous year due to facts that the property was unauthorized property and the Government was having a sealing drive on the unauthorized property, provisions of section 23(1)(c) would not be applicable. (AY. 2013-14)

Kamal Kumar. v. ACIT (2022) 195 ITD 572 (Delhi) (Trib.)

S. 23 : Income from house property-Annual value-Vacant allowance-Property was vacant throughout the year-Addition cannot be made on notional rent [S. 22, 23(1)(c)]

Dismissing the appeal of the Revenue the Tribunal held that in spite of efforts the property wasnot let out, no addition can be made on notional rent, the assessee is entitled to benefit of section 23(1)(c) of the Act.(ITA No.207/Ahd/ 2018 dt.10-11-2022) (AY. 2013-14)

DCIT v. Dhaval D.Patel(2022) 145 taxmann.com 20 / (2023) 198 ITD 293 (Ahd)(Trib)

S. 23 : Income from house property-Annual value-Estimation of annual letting value-Not based n any reasonable working in determining annual letting value-Addition was deleted.[S. 22, 23(1)(c)]

Assessee in returns of income filed had not shown any rental income of his property. The AO estimated the estimated annual letting value of property at Rs. 12 lacs for assessment year 2011-12 and added an annual enhancement of 10 per cent on same for subsequent years. Commissioner (Appeals) upheld order of AO. On appeal the Tribunal held that the AO had not based estimate on any reasonable working in determining annual letting value. It was also noted that no description of property as to area and market rates prevalent for rents had been brought on record. Since annual value determined was devoid of any rational endorsement, appeals filed by assessee deserved to be allowed. (AY. 2011-12 to 2013-14)

Sunil Kumar v. ACIT (2022) 194 ITD 764 (Delhi) (Trib.)

S. 23 : Income from house property-Annual value-Builder-Unsold flats-Stock in trade-No addition can be made on account of deemed rental income in respect of unsold stock of flats held as stock in trade up to assessment year 2017-18. [S. 22, 23(5)]

Held that where assessee had been showing income derived from sale of flats as and when they were sold and flats remaining unsold were shown as inventories in balance sheet of assessee as stock-in-trade no addition on account of deemed rental income could be made in respect of unsold stock of flats held as stock in trade up to assessment year 2017-18. Amendment had been brought in statute in section 23(5) from assessment year 2018-19 providing a moratorium period of two years, hence, no addition could be made for assessment year 2018-19. (AY. 2016-17 to 2018-19)

Pegasus Properties (P.) Ltd. v. DCIT v. (2022) 193 ITD 514 (Mum) (Trib.)

S. 23 : Income from house property-Builder stock in trade-Deemed notional rent in respect of unsold flats held as stock in trade-Provisions of S. 23(5) are prospective-Addition was deleted.[S. 22, 23(5)]

Allowing the appeal of the assessee the addition made as deemed notional rent in respect of unsold flats held as stock in trade was held to be not justified. Provisions of S. 23(5)are prospective.Followed Pegaus Properties (P))Ltdv.DCIT(2022) 193 ITD 514 (Mum)(Trib), and DCIT v. Bengal Shapoorji Housing Development Pvt Ltd (ITA No. 2927/Mum/2019 dt 13-5-2021).ITA No. 1953 /Mum/ 2020 / 1954/Mum/ 2020/ 11/Mum/ 2021/ 12 /Mum/ 2021 Bench 'E' dt. 27-6 2022)(AY. 2015-16, 2017-18)

Sheth Developers Pvt Ltd v.Dy.CIT(Mum)(Trib) www.itatonline.org

S. 24 : Income from house property - Deductions - Interest on housing loan — Jointly borrowed with husband – Interest allowable as deduction. [S. 24(b)]

Held that under section 24(b) , it is not necessary that the assessee should make the payment on the money borrowed by him for acquiring the housing loan. What is necessary is this that the money should have been borrowed by the assessee for the purchase of the property on which the interest is payable. There was no dispute that the interest-bearing fund had been used by the assessee for acquiring the house property. Thus, the provisions of section 24(b) of the Act had been duly complied with as the source of payment for the interest was known, i.

e., the assessee's husband. Accordingly, the assessee could not be denied the deduction of the interest under section 24(b) of the Act **.** (AY.2013-14)
ITO v. Mamta Rajivkumar Agarwal (Smt.) (2022)100 ITR 17 (SN)(Ahd.)(Trib)

S. 24 : Income from house property-Deductions-Interest paid on loan-Flat mentioned in the loan agreement and deduction claimed was different-Deduction is not allowable.[S. 22, 24(b)]
AOdisallowed the interest on the loan. Held that written document of loan which mentioned another/different flat and garage. Disallowance is justified.(AY. 2014-15)
Michelle Yohan Poonawalla. v. DCIT (2022) 197 ITD 454 (Pune) (Trib.)

S. 24 : Income from house property-Deductions-Interest on loan-Loans for purchasing flats-Further loan borrowed for repayment of earlier loans-Allowable as a deduction.[S. 22, 24(b)]
Assessee had borrowed a home loan from the bank for buying certain flats-Held that the nomenclature of the loan does not affect the allowability of interest under section 24(b) of the Act. Accordingly, interest paid on the second loan taken for repayment of an earlier loan which was borrowed to purchase a flat was allowable as a deduction. (AY. 2011-12)
Subir Kumar Banerjee. v. ACIT (OSD) (2022) 195 ITD 366 (Nagpur) (Trib.)

S. 24 : Income from house property-Deductions-Interest on borrowed loan-commercial property was not ready to let out-In the absence of evidence the disallowance is affirmed.[S. 22]
Assessee claimed deduction under section 24 of an amount of Rs. 1,38,31,621 in respect of interest paid on loan taken for construction of commercial property. The AOdisallowed the claim. CIT(A) confirmed the disallowance on the ground that there was no rental income. On appeal the assessee contended that building construction had been completed and it was ready to let out and it always had intention to let out property but due to market conditions it failed to let out and failure to let out could not be attributed to it. Tribunal held that there was no evidence to suggest that commercial building was ready in all respects by getting power connection, water connection, occupation certificate, clearance from firefighting department, etc., it could not be presumed that building was ready to let out and assessee had taken steps to let out.In absence of any such evidence lower authorities were justified in disallowing claim of assessee with regard to interest paid on loan borrowed for construction of building. (AY. 2011-12)
Netra Software Technologies (P.) Ltd. v. ACIT (2022) 194 ITD 760 (Bang) (Trib.)

S. 24 : Income from house property-Deductions-Rent of furniture and fixtures etc-30% deduction allowable as deduction-Reimbursement of member's share of contribution for repairing the entire society building is held to be not taxable as it has no income element.[S.4, 22, 24(a)]
Held that deduction under section 24(a) is held to be allowable even for rent of furniture and fixtures etc. Reimbursement of member's share of contribution for repairing the entire society building is held to be not taxable as it has no income element.(TS-1121-ITAT 2021 (Mum) (AY. 2012-13 (Dt. 30-11-2021)
Lewis Family Trust v.ITO(2022) BCAJ-February-P. 39 (Mum)(Trib)

S. 24 : Income from house property-Deductions-Interest on borrowed funds-Onus on assessee-No Documentary evidence furnished-Disallowance proper.[S. 24(b)]

Held that the onus was upon the assessee to demonstrate that the borrowed funds had been fully utilized for purchase of the property and that the payment of interest was in respect of the borrowed funds. No documentary evidence was furnished.Disallowance is held to be proper..(AY.2011-12)

Niyant Heritage Hotels (P.) Ltd. v ITO (2022)93 ITR 11 (SN)(Delhi) (Trib)

S. 28(i) : Business income-Capital gains-Purchase and sale of shares-Short period of holding and frequency of transactions-Assessable as business income [S. 45]

The AO assessed the income from the purchase and sale of shares business income as against capital gains shown by the assessee. Orders were affirmed by the Tribunal and affirmed by High Court. On SLP Court order of High Court affirmed for the AY. 2010-11. For the assessment year 2006-07, since the assessee had availed of the benefit under the Direct Tax Vivad Se Vishwas Scheme and a certificate under the Scheme had been issued and since the assessee had filed an application for rectification of some errors, which had been partly allowed and another application was pending, the special leave petition in so far as relating to this year was dismissed as withdrawn. For the assessment year 2008-09 special leave was granted in respect of income or capital gains earned on sale of shares of J. K. Investo Trade Ltd., Munjal Showa Ltd. and Samlel Colours Ltd..(AY.2006-07, 2008-09, 2010-11)

Equity Intelligence India Pvt. Ltd. v. ACIT (2022)449 ITR 396 / 329 CTR 793 /220 DTR 193 (SC)

Editorial: Equity Intelligence India Pvt. Ltd. v. ACIT(2015) 376 ITR 321 (Ker)(HC), partly affirmed.

S. 28(i) : Business income-Income from lease-Exploitation of property and not exploitation of business assets-Assessable as income from other sources-Quality loss-No business carried on-Not allowable as deduction.[S.2(14), 56]

Assessee continuing lease agreement and renewing it every year. The assessee claimed the income from lease as business income. the AO treated the income from other sources. Appellate Tribunal affirmed the view of the AO. On appeal the High Court affirmed the order of the Tribunal and held that lease rental was rightly assessed as income from other sources. Affirmed by the Honourble Supreme Court.(AY.2004-05 to 2009-10)

PTL Enterprises Ltd. v. Dy. CIT (2022)443 ITR 260/ 326 CTR 858/ 286 Taxman 564 / 214 DTR 233 (SC)

Editorial: Decision in PTL Enterprises Ltd. v Dy. CIT (2021) 439 ITR 365/(2022) 212 DTR 404 / 326 CTR 282(Ker)(HC) affirmed.

S. 28(i) : Business income-Letting out of properties along with other amenities-Rental income assessable as business income and not as income from house property [S. 22]

Dismissing the appeal the Court held that since assessee had given only commercial space on a license basis, rental income received thereon was to be assessed under head business income. (AY. 2001-02 to 2006-07))

CIT v. G.V. Foundations P. Ltd. (2022) 287 Taxman 140/ 113 CCH 311 (Mad.)(HC)

S. 28(i) : Business income-Income from house property-Income from other sources-Rental income from Mall should be considered as business.[S. 22, 56]

Dismissing the appeal of the revenue the Court held that rental income received from Forum Mall should be considered as income from business and not income from house property.(AY. 2005-06)

CIT v. Prestige Estate Projects Pvt Ltd (2022) 440 ITR 343 (Karn) (HC)

S. 28(i): Business income -Capital or revenue — Benefit or perquisite arising from business — Engine manufacturer giving assessee credit for selecting its engines - Not assessable as revenue receipt or capital gains – Capital receipts -Construction of documents - Nature of receipt to be judged in hands of recipient- Entries in books of account not determinative of character of receipt as income . [S.4, 28(iv), 45 , 48]

Assessee entering into agreement to purchase 100 Aircrafts from French manufacturer with option to select engine to be fitted therein . Engine manufacturer giving assessee credit for selecting its engines. Credits not subsidy or discount or commission . Assessee not engaged in trading of Aircraft or business of receiving credits .Credits received in form of money and not benefit or perquisite arising from business . Credits not incidental to or derived from business of operation of commercial Aircraft . Not a case of adventure in nature of trade .Subsequent acquisition of Aircraft on lease not material. Purpose of credits to provide support for Aircraft acquisition . Credits were capital receipt . No sale consideration flowing to assessee from lessors assessable to Capital gains tax. No presumption that transaction or agreement is colourable or sham- Construction of document primarily to be on basis of terms and conditions therein- Nature of receipt to be judged in hands of recipient. Entries in books of account not determinative of character of receipt as income.(AY.2012-13)

Interglobe Aviation Ltd. (Indigo) v. Add. CIT (2022)95 ITR 586 (SB) (Delhi) (Trib)

S. 28(i) : Business income -Capital gains-Purchase and sale of agricultural lands-Transactions were adventure in nature of trade- Assessable as business income. [S. 2(13), 45]

Held that all the transactions of sale and purchases were undertaken within a period ranging from eight days to eight months and the purchases for almost immediate resale thereof clearly demonstrated that the transactions entered were nothing but an adventure in the nature of trade, i. e., a business transactions under the extended definition of section 2(13) of the Act. Consequently, profits arising therefrom partook of the character of business income exigible to tax under section 28 of the Act.(AY.2012-13)

Dilip Bhattu Karanjule v. ITO (2022)100 ITR 59 (SN)(Pune) (Trib)

S. 28(i) : Business income –Land dealings-Sale of residential plots by plotting agricultural land-Purchase of immoveable property-Assessable as business income and not capital gains-Matter remanded to determine capital gains till the date of conversion and business income thereafter.[S. 2(13), 45, 54B, 54F]

Assessees Seema Bhattacharya andJhranaBhattachrya were wives of kartas Shri Baskar Bhattachrya (Husband of JB) and Shankar Bhattacharya (Husband of SB) who were brothers.Assessees sold their agricultural land and purchased an immovable property from sale consideration.Assessee Seema Bhattacharya claimed exemption under section 54B for investment of sale proceeds in agricultural land. Held that the assessees sold residential plots by plotting agricultural land. Date of conversion of erstwhile agricultural land into a residential land or commencement of plotting itself, could be regarded as date of conversion of erstwhile capital asset into a business/trading asset. Matter remanded back to AO to compute capital gains and business income.(AY. 2009-10)

ITO v. Seema Bhattacharya. (2022) 197 ITD 241 (Jabalpur) (Trib.)

S. 28(i) : Business income-Rental income-Memorandum of Association-Main object was to acquire properties such as land and building, leasehold or freehold, and also to earn rental income-Leave and licence-Tax deducted at source-Deduction of tax at source by payer cannot determine taxability in the hands of recipients-Rental income assessable as business income and not as income from house property [S. 22, 194I]

Held that according to the Memorandum of Association, the main object of the assessee-company was to acquire properties such as land and building, leasehold or freehold, and also to earn rental income from these properties, income derived by the assessee from leave and license agreement was to be chargeable to tax as business income and not as income from house property. Tribunal also held that deduction of tax at source by the payer cannot determine taxability in the hands of recipients Rental income is assessable as business income and not as income from house property. (AY. 2013-14)
Nisarg Realtors (P.) Ltd. v. ACIT (2022) 195 ITD 402 (Mum) (Trib.)

S. 28(i) : Business income-Undisclosed sources-Unaccounted stock-Declared during survey-Assessable as business income and not u/s 69A as unexplained money-Remuneration and interest paid to Partners from said excess stock disclosed as business income allowable as deduction.[S. 69A, 40(b)(iv), 133A]

Assessee firm engaged in business of trading of cloth, declared the unaccounted stock as business Income, based on certain incriminating material found during Survey. Assessee Firm claimed partner remuneration and interest as expense against said additional income. A.O treated the said Income as income u/s 69A. CIT(A) held that the disclosed income cannot be sustained as income u/s 69A, and further allowed the deduction u/s 40(b)(iv) of the act. On Appeal, the Tribunal held that since the assessee is only engaged in the business of trading of cloth, unaccounted stock found is related to its business, and hence assessable as Business Income. It was further held that there is no loss to revenue, as the income of partnership firm and also the interest and remuneration paid to partners is subject to maximum marginal rate of income tax @ 30%, and hence the declaration of unaccounted stock found during survey is assessable as business income. (AY.2015-16)
ACIT.v. Mangaldeep (2022) 216 TTJ 102 /211 DTR 7 (Surat)(Trib.)

S. 28(i): Business income or Income from other sources-Interest income on fixed deposit-Assessable as business income-Income from Mutual funds and income-tax refund to be treated under head income from other sources [S. 56, 71]
Held, that the assessee had not recognised any revenue from its business operations and had capitalised the expenses incurred. The business funds lying idle with the assessee were invested in fixed deposits for earning income which was utilised in the business at the time of need. The decision to invest the idle funds lying with the assessee in fixed deposits had to be accepted as a decision taken by a prudent businessman keeping in view the commercial expediency. The assessee had temporarily parked its business funds in short-term deposits varying between three and nine months. When the need arose, the assessee encashed the fixed deposits and utilised the funds for its business purposes. Therefore, the interest income

earned on fixed deposits had to be treated as business income of the assessee and had to be set off against the revenue expenses. However the income earned from mutual funds and interest from Income-tax refund, had to be taxed under the head Income from other sources. Relied CIT v. Lok Holdings (2009) 308 ITR 356(Bom))(HC). Tribunal also held that neither the AO nor Commissioner (Appeals) had given conclusive finding on the additional ground seeking to set off of income from other sources against the revenue expenses under section 71 of the Act. Therefore, the issue was restored to the AO.(AY.2015-16)

HabitateRealtech P. Ltd. v. Dy. CIT (2022)93 ITR 76 (SN) (Delhi) (Trib)

S. 28(i): Business income-Adventure in nature of trade-Sale of land within four months from date of purchase-Assessable as business income.

Held, that the assessees had sold a piece of land for Rs. 50 lakhs within a period of four months from the date of its purchase at Rs. 7,50,000. There was no evidence to show that the purchase and sale of the property was with an intention of investment. The intention of the assessee was to resell the land and not to hold it. Therefore, the Commissioner (Appeals) was right in treating the sale transaction as an adventure in the nature of trade.(AY.2012-13)

Sudhir Angre v. ITO (2022)93 ITR 69 (SN)(Pune) (Trib)
Sunil Angre v. ITO (2022)93 ITR 69 (SN)(Pune) (Trib)

S. 28(i) : Business income-Gross income as per books of account and gross revenue in from No 26AS-Reconciliation statement was filed-Matter remanded to the AO-Capital gains-Valuation report-AO cannot reject the valuation report of the valuer without referring to valuation Officer-Matter remanded [S. 45, 50C(2), 194H, Form No 26AS]
AO found that gross income shown by assessee in books of account did not match with gross income reported in Form 26AS Assessee with respect to commission income submitted that he had been raising invoice to his clients after charging amount of service tax, however, clients, had deducted TDS under section 194H on amount inclusive of service tax and therefore, there was difference between income shown in books viz-a-viz income shown in Form 26AS issued by revenue.AO treated said difference as income. On appeal the Tribunal held that since such difference was duly explained by assessee in reconciliation statement but such reconciliation statement was not considered by AO, consideration of said reconciliation statement being necessary to put an end to ongoing dispute, issue was remanded to file of AO for fresh adjudication.Matter remanded.Assessee had filed report of registered valuer of property for determining market value of property as on date of transfer but AOrejected valuation report submitted by assessee after pointing out certain infirmities. On appeal the Tribunal held that,sinceAO cannot reject valuation report filed by assessee without referring same to DVO under provisions of section 50C(2), in interest of justice issue was remanded to file of AO with direction to refer same to DVO for purpose of valuation. (AY. 2011-12)
Govind Ganpatlal Thakkar. v. ACIT *(*2022) 192 ITD 647 (Ahd) (Trib.)

S. 28(i): Business loss-Amalgamation-Excess of liabilities over assets-Allowable as business loss /deduction-Matter remanded with direction [S. 37(1)]

Assessee-bank was merged with LCB in year 1985 and there was excess of liabilities over assets. Consequently, assessee incurred loss and claimed same as deduction.AO disallowed same.Tribunal allowed the claim of the assessee.On appeal by Revenue High Court held that if no deduction was allowed on excess of liabilities over assets in year of merger, subsequent realization out of assets of LCB could not be brought to tax. It further held that if such disallowance of loss had attained finality, matter required reconsideration and if found affirmative, no addition could be made in relevant assessment year. (AY. 2007-08)
CIT,LTU v. Canara Bank. (2022) 142 taxmann.com 361 (Karn)(HC)
Editorial : Notice issued IN SLP filed by the Revenue, CIT, LTU v. Canara Bank. (2022) 289 Taxman 82 (SC)

S. 28(i) : Business loss-Advance of money-Irrecoverable amount-Capital loss not allowable as business loss [S. 36(1)(iii), 37(1)]

Assessee advanced certain amount on interest. After some years the loan was written off as irrecoverable amount and claimed as business loss AO disallowed claim on ground that money lending and banking were not principal activities and that advances were transactions on capital account and, therefore, loss suffered by assessee was capital loss which was neither admissible under section 36(1)(iii) nor under section 37(1) of the Act.-Commissioner (Appeals) confirmed order of AO on premise that putting surplus money as inter corporate deposit for earning of interest could not be said to be incidental to business or during ordinary course of business. Tribunal held that loss incurred by assessee in respect of loan advanced was in nature of capital loss and was not allowable under section 28(i) of the Act. (AY. 2000-01).

Ashok Leyland Ltd v. ACIT (2022) 288 Taxman 514 (Mad)(HC)

S. 28(i): Business Loss-Loss in stock-in-trade-Allowable as business loss.

Held that the immoveable properties acquired was stock in trade hence allowable as business loss.*(*AY.2004-05)

CIT v. Ing Vysya Bank Ltd. (2022) 448 ITR 94 (Karn)(HC)

S. 28(i) : Business loss-Bad debt-No evidence that loss was connected with business-Disallowance of loss is justified [S. 36(1)(vii)), 260A]

Dismissing the appeal the Court held that from the findings of the authorities below that after analysing the entire pleadings and the submissions made on either side, they had in unequivocal terms, held that there was no material available to prove that the loss incurred by the assessee was for the purpose of acquiring the property at Coimbatore for expansion of its business and hence, was not treated as business loss or bad debts. Such a finding was rendered by the authorities below, based on the material evidence. The disallowance of loss was justified..(AY.2006-07)
Hotel Sri Lakshmi v. ACIT (2022)448 ITR 139 (Mad)(HC)

S.28(i): Business loss-Guarantor-Allowable as business loss.[S. 37 (1)]
The question was reframed reads as under " Whether on the facts and circumstances of the case the Appellate Tribunal is right in setting aside the order of the AO disallowing the balance investment of the appellant amounting to Rs. 51, 80, 000 in Gujarat PerstopEletronics Ltd (GPPEL) ?" Following the Judgement in CIT v. Apollo Tyres Ltd (2019) 4199 ITR 100 (Ker)(HC),where in the Court held that the assessee as a guarantor of its JV company GPEL, had to pay certain amount to banks and financial institutions as one time settlement on account of inability of GPEL to pay off its debts, since truthfulness of entries was not doubted and it was not a case of syphoning of money through fictitious entries, assessee's claim for business loss in respect of amount paid was to be allowed. The question was answered in favour of assesee. (AY.2007-08)
CIT v. Apollo Tyres Ltd. (No. 3) (2022)447 ITR 393 (Ker)(HC)

S. 28(i): Business loss – Running of sick company – Business loss allowable as deduction. [S. 37(1)]
Held that the Assessee has invested certain amount for operationalising the business of a sick company for facilitating its own business, the irrecoverable loss incurred by the assessee on account of failure of the business due to technical snags and uncontrollable factors is a loss in the revenue filed and, therefore, allowable as deduction. (AY. 2004-05)
ITO v. Roj Enerprises (P) Ltd. (2022) 219 TTJ 70 (UO)(Pune)(Trib)

S. 28(i):Business loss - Operationalising a sick company- Loss is allowable as business loss. [S. 37(1)]
Held that the amount spent for operationalising the business of a sick company for facilitating its own business. The loss incurred in the ordinary course of business . Allowable as business loss . (AY. 2004 -05)
ITO v. Roj Enterprises (P) Ltd. (2022) 219 TTJ 70 (UO) (Pune)(Trib).

S. 28(i): Business loss-Forward contract-Hedging transactions through banks–Loss allowable as business loss and not speculation loss. [S. 43(5), 73]
The assessee had entered into hedging transactions through banks and the amounts for which the hedging transactions were entered into were within the amount of the underlying transactions of imports and exports. There was no independent transaction of foreign exchange on standalone basis. Thus, the loss could not be in any manner equated with hedging of foreign currency alone, and ceased to fall within the realm of speculation and was inextricably linked with the business of the assessee. Followed Dy. CIT v. Mahendra Brothers Exports P. Ltd. (I. T. A. Nos. 7319 and 7449/Mum/2011, dated July 25, 2016) (AY. 2009-10 to 2012-13)
Dy. CIT v. Mahendra Brothers Exports Pvt. Ltd. (2022) 99 ITR 537 (Mum.)(Trib.)

S. 28(i) : Business loss-Business expenditure–Commodities trading - Non-recovery of purchase cost of goods paid to National Spot Exchange (NSEL)-Allowable as business loss. [S. 37(1), 145]
Assessee had made payment towards purchase cost of commodities prior to 6th Aug, 2013. National Spot Exchange (NSEL) trading operations were suspended on 6th Aug, 2013 by Ministry of Corporate Affairs. The assessee received was only delivery allocation report according to which stock was in possession of NSEL warehouse though title of the goods was with the assessee. Sufficient goods were not physically available in the warehouse . DE CIT which came to light through audit conducted by independent auditors at the warehouse at the

behest of the Government. Since the stock of goods was not found in the warehouse, assessee lost its chance to ASEL recover the amounts paid from NSEL. It was the legal obligation of the NSEL to settle the contracts. NSEL failed to pay the outstanding amounts under the contracts of the assessee-company through its broker member. The AO disallowed the loss . CIT(A) allowed the claim of the assessee. On appeal by the Revenue the Tribunal held that since the purchase cost of the commodities became irrecoverable, CIT(A) was justified in allowing deduction of the amount written off by the Assessee in its books. Followed CIT v. Wackhardt International Ltd. (2009) 314 ITR 11 (Bom)(HC). (AY.2014 -15)
Dy. CIT v.Cello Pens & Stationary (P) Ltd. (2022) 215 TTJ 486 / 210 DTR 53 (Mum.)(Trib.)

S. 28(i) : Business loss - Real estate business — Purchase of land -Litigation – Stock in trade – Allowable as business loss .
Held that loss on purchase of land which is stock in trade , the loss is allowable as business loss.(AY. 2014-15)
Amarnath Aggarwal Builders Pvt. Ltd v. Dy. CIT (2022) 99 ITR 194 (Amritsar) (Trib)

S. 28(i) : Business loss -Fluctuation in foreign exchange-Restatement of outstanding liabilities on revenue items — Allowable as revenue expenditure .[S. 37(1)]
Held that the foreign exchange fluctuation was not on capital account. Hence the loss which arose on restatement of outstanding liabilities was on revenue items and was allowable as deduction. Accordingly, the order of the Commissioner (Appeals) was to be set aside and the Assessing Officer was directed to allow the loss arose on account of restatement of liabilities of revenue items.(AY.2002-03)
Herbalife International India Pvt. Ltd. v. Dy. CIT (2022)100 ITR 456 (Bang) (Trib)

S. 28(i) : Business loss – Working capital – Allowable as business loss.[S. 37(1)]
Held that loss on account of exchange resulting of loans in foreign currency allowable as business loss . Relied CIT v. Woodward Governor India P. Ltd. (2009) 312 ITR 254(SC), Oil and Natural Gas Corporation Ltd. v. CIT (2010) 322 ITR 180 (SC) (AY.2005-06)
Dy. CIT v. Global Wool Alliance Pvt. Ltd. (2022)100 ITR 12 (SN)(Kol) (Trib)

S. 28(i): Business loss – Embezzled- Loss deemed to be arisen when assessee comes to know about it and on realization on non recovery despite multiple attempts- Police complaints, Banking ombudsman etc- Write off on loss due to embezzlement allowable. [S. 145]
The Tribunal held that the assessee came to know of embezzlement in 2001-02 but he tried his level best to recover the embezzled amount by filing police complaints and even having the matter referred to the CBI by filing first investigation reports against the accused persons. The assessee also pursued the matter with the banking ombudsman and the bank officials, when finally everybody refused and there was no chance of recovery, the assessee reversed this amount in the accounts of the assessee for assessment year 2008-09, when it finally discovered that this amount was not recoverable. Hence, in such circumstances, the loss on account of embezzlement claimed by the assessee was allowable in this year.(AY. 2008-09)
George Oakes Ltd v. ACIT (2022)97 ITR 44 (SN) (Chennai) (Trib)

S. 28(i): Business loss - Advances given to employees for meeting expenses - Amounts irrecoverable — Allowable as business loss - Matter remanded to the Assessing Officer for fresh examination [S. 37(1)]

Held that the giving of advances to employees and vendors was essential, and wholly and exclusively linked to the business of the assessee. The loss, if any, was an incidental business loss. The non-recoverable advances given to vendors were also allowable as a business loss. The Assessing Officer was directed to to examine the assessee's claim of deduction under section 37(1) read with section 28. Matter remanded. (AY. 2014-15)

Xchanging Solutions Ltd. v. Dy. CIT (2022)96 ITR 544 (Bang)(Trib)

S. 28(i) : Business loss-Stocks written off-Claim made under sundry balance written off-Allowable as business loss [S. 37(1)]

During the year, the assessee had written off the sum of Rs. 84.57 lakhs on account of sundry balance written off which represented stock written off in respect of garment stock and stock of trims and only a small portion of the total represented sundry debtors written off. The AO rejected the claim. On appeal, Commissioner(Appeals) allowed the claim by accepting contentions that this was a mistake in classification as said written-offs were made under the wrong head, however, undoubtedly represented business loss and was allowable. On appeal, the Tribunal held that even stocks written off which were rendered unserviceable represented a business loss and had to be allowed while computing the income of the assessee though the assessee had made claim under head sundry balance written off. (AY. 2011-12)

ACIT v. Uniworth Textiles Ltd. (2022) 195 ITD 675 (Kol) (Trib.)

S. 28(i) : Business loss-Advance for business purposes-Amount written off-Allowable as business loss.[S. 37(1)]

Held that the wisdom and the business prudence of the assessee could not be questioned to test the said transaction on preponderance of probability when there was no adverse material against the assessee with regard to business dealing of the assessee with the party. The reasoning given by the Commissioner (Appeals) for disallowing the claim of loss could not be accepted and the explanation and the loss claimed with regard to advance paid to this party was allowed as business loss. Referred Shiv Raj Gupta v. CIT (2020) 425 ITR 420 (SC).(AY.2015-16)

BCL Secure Premises Pvt. Ltd. v. ACIT (2022)93 ITR 267 (Delhi)(Trib)

S. 28(iv) : Business income - Value of any benefit or perquisites - Company — Principle of lifting of corporate veil- Converted in to money or not -Directors transferring shares to persons in control of company which had discontinued news paper business – Not a case of acquisition of shares simpliciter - Benefit derived by transaction to be taxed as arising from business from adventure in nature of trade — Not as income from other sources-Valuation of benefit at fair market value of property proper [S. 2(13) 28(i), 56, 56(2)viib), R. 11UA]

Held that looking to the entire scheme of design under which transactions had been executed the benefit derived by this transaction could be brought to tax under section 28(iv) . The acquisition of shares was merely a step in the entire adventure, which was in the nature of trade and commerce. It was a case of acquisition of properties in the garb of these transactions which had not only resulted in having these properties immediately after the acquisition of the transaction but also in future whereby exploitation of these properties would lead to income in the nature of trade and business. It was a case of valuation of stock-in-trade.The provisions of either section 56(2)(viia) or (x) deal with the situation where

transaction is made for no consideration or lower consideration and someone transferring the assets to the other. This was a case where the properties were taken control of under a scheme designed to acquire the shares of a company under a pre-planned scheme with the connivance of AJL and the AICC. The transaction had resulted in benefit to the assessee in the form of huge immovable properties held by AJL making section 28(iv) applicable to the benefit derived therefrom. That since the shares had been acquired only to get control and beneficial enjoyment of the underlying immovable properties located in the prime cities of the country and the benefit did not arise in the form of shares, any reference to rule 11UA of the Income-tax Rules, 1962 was out of context and, therefore, the adjustment sought for by the assessee on that account was not irrelevant.That once the shares were not the subject matter of valuation there was no question of deduction for tax outgo at the rate of 30 per cent. or for liabilities of the company as on the valuation date or for illiquidity since the shares were unlisted. .(AY.2011-12)

Young Indian v. ACIT (E) (2022)95 ITR 33 (SN)/ 218 TTJ 1 (Delhi)(Trib)

S. 28(iv) : Business income-Value of any benefit or perquisites-Converted in to money or not-Advance deposits in preceding year-Failure tofile confirmation-Cessation of liability-Provision of section 28(iv) is not applicable. [S. 41(1)]

Assesseehad received advances/deposits in preceding years from 6 parties, for providing handling services in connection with its business. Assessee explained its inability to submit confirmations of aforementioned parties, Assessing Officer held that same were in nature of benefit or perquisite within meaning of section 28(iv) and, accordingly, Assessing Officer made an addition under section 28(iv). Held that since cessation of outstanding liability of assessee, i.e., deposits/advances for providing handling services that were received by assessee in normal course of its business in preceding years, would undisputedly represent cash/money and was not in nature of benefit or perquisite, provisions of section 28(iv) would not get triggered. (AY. 2009-10)

Infrastructure Logistics (P.) Ltd. v. JCIT *(*2022) 196 ITD 153 (Panaji) (Trib.)

S. 28(iv) : Business income-Value of any benefit or perquisites-Converted in to money or not-Dealer-Redistributor-Incentive from UI for purchase of Van-Not in the nature of perquisite-Reduced from the cost of acquisition for claiming depreciation. [S. 32, 43(1)]

Assessee was a partnership firm engaged in business of distribution of agro machineries and worked as dealer/redistributor of companies like CG and UI. It had received special redistributors incentive from UI in form of credit notes and since said benefit in form of incentive had arisen to assessee in course of business, the Assessing Officer treated it as business income of assessee as per section 28(iv) and made addition to that extent. Tribunal held that the amount of incentive was received from UI for specific purpose of purchase of van which was to be utilised for display and demonstration of logo of UI and said amount had actually been utilised for purchase of van in immediately succeeding year. Further, assessee reduced incentive received from UI from cost of acquisition and thereafter balance amount was reflected in balance sheet on which depreciation was claimed by assessee and this accounting treatment was duly given by assessee as per Explanation 10 to section 43(1) of the Act. Accordingly the Tribunal held that incentive received by assessee from UI, could not be treated as business income of assessee in terms of section 28(iv) and thus addition made by Assessing Officer under section 28(iv) was to be deleted. (AY. 2011-12

Motor Machinery Tools. v. ACIT *(*2022) 192 ITD 42 (SMC) (Kol) (Trib.)

S. 32 : Depreciation-Lease of property-Terms of lease showing assessee owner of plant and machinery-Lease rentals taxed as revenue receipts-Entitle to depreciation

Held, dismissing the appeal of the Revenue the Court held that from the relevant clauses of the agreements dated December 8, 1993 and December 30, 1994, it was apparent that the assessee had become the owner of the plant and machinery. Further the lease rentals in entirety had been taxed as revenue receipts. Order of High Court allowing the depreciation is affirmed.

CIT v. SBI Home Financer Ltd. (2022)447 ITR 659/(2023) 290 Taxman 108 (SC)

Editorial: Order in SBI Home Financer Ltd v. CIT (2006) 286 ITR 6 (Cal)(HC) affirmed.

S. 32 : Depreciation-Based on evidence-No question of law [S.260A]

Dismissing the appeal of the Revenue the Court held that the Tribunal had recorded that the details were submitted during the assessment proceedings by the assessee in its reply which was mentioned in the assessment order itself. The Tribunal had also recorded that there was no new evidence brought on record and that the Assessing Officer had ignored the reply filed by the assessee. Order of Tribunal is affirmed.*(*AY.2010-11)

PCIT v. PTC India Financial Services Ltd. (2022)449 ITR 309 (Delhi)(HC)

S. 32 : Depreciation-Windmills-Income offered-Depreciation is allowable.

Where Assessing Officer disallowed depreciation on windmills on the ground that there was no-proof that the assessee had bought windmills during the relevant year, since admittedly it was on record that the transaction of purchase of windmills had taken place during the relevant year and the assessee had also offered income generated from windmills for that period, depreciation was to be allowed on said windmills. (AY.2007-08)

CIT v. KBD Sugar & Distilleries Ltd. (2022) 220 DTR 483 / 144 taxmann.com 38 (Karn) (HC)

S. 32 :Depreciation-lease of assets-Genuine transaction-Entitle to depreciation.

Dismissing the appeal of the Revenue the Court held that since transaction of assessee-bank with two companies, namely Rajendra Steels and Kedia group companies was genuine and assets which were leased out were in existence, assessee was entitled to depreciation. (AY. 2007-08)

CIT, LTU v. Canara Bank. (2022) 142 taxmann.com 361 (Karn)(HC)

Editorial : Notice issued IN SLP filed by the Revenue, CIT, LTU v. Canara Bank. (2022) 289 Taxman 82 (SC)

S. 32 : Depreciation-Lease of assets-Depreciation is allowable.

Dismissing the appeal of the Revenue the Court held that the assessee had furnished evidences in form of sanction letters, master/supplement lease agreements, purchase invoices, installation certificates, inspection reports conducted by bank officials, independent valuation report in respect of assets lease out to companies as well as inspection reports pertaining to pre-search and post search period, to prove genuineness of assets leased out to companies. Tribunal is justified in allowing the depreciation. (AY. 2009-10)

CIT v. Canara Bank (2022) 141 taxmann.com 566(Karn)(HC)

Editorial : SLP granted to Revenue, CIT v. Canara Bank (2022) 288 Taxman 655 (SC)

S. 32 : Depreciation-Intangible asset-Geographical report-Entitled to depreciation. [S. 35E]

Assessee was involved in mining of coal and for such purpose had purchased a geographical report. Assessee capitalized it under head plant and machinery for which depreciation was claimed at 25 per cent.Assessing Officer disallowed depreciation. Tribunal allowed the claim of the assessee. On appeal by the Revenue dismissing the appeal the Court held that since report was highly technical and was a basic document based on which assessee got a right to mine apart from assessing quantity of mineral that could be exploited from said mines, formation of dyke and other technical details, Tribunal was justified to allow depreciation on geographical report as intangible asset and by not considering expense under section 35E of the Act. (AY.2003-04)

CIT v. Integrated Coal Mining Ltd.(2022) 288 Taxman 783/ 218 DTR 303/ 329 CTR 517 (Cal)(HC)

S. 32 : Depreciation-Securities-Stock in trade-Depreciation on account of fall in value of securities allowable.

Dismissing the appeal of the Revenue, the Court held that depreciation on account of fall in value of securities allowable. (AY. 2008-09)

CIT v. Karnataka Bank Ltd.(2022) 142 taxmann.com 64 (Karn)(HC)

Editorial : SLP granted to Revenue, CIT v. Karnataka Bank Ltd.(2022) 288 Taxman 725 (SC)

S. 32 : Depreciation-Additional Depreciation-All component/parts of a plant acquired prior to 31-3-2005-Fitted to plant thereafter-Eligible for additional depreciation [S. 32(1)(iia)]

Held that all component/parts of a plant acquired prior to 31-3-2005 but fitted to plant thereafter would be eligible for additional depreciation under section 32(1)(iia) for assessment year 2006-07. (AY. 2006-07)

National Aluminium Co. Ltd. v. CIT (2022) 288 Taxman 36 / 215 DTR 375/ 327 CTR 340 / (2023)451 ITR 383 (Orissa) (HC)

S. 32 : Depreciation-Bottles and crates-Business of manufacturing and sales of soft drinks-Plant-Bottles and crates used for bottling soft drinks manufactured would be included in definition of plant-Eligible for 100 per cent depreciation. [S. 32(1)(i), 43(3)]

Assessee-company, engaged in business of manufacturing and sale of soft drinks, had purchased bottles and crates from various suppliers. For the purpose of distribution to customers, soft drinks manufactured were filled in bottles and stacked in crates by assessee. Assessee claimed 100 per cent depreciation on such bottles and crates. Assessing Officer denied the claim of depreciation on ground that table of Plant and machinery under Income-tax Rules,1962 framed under rule 5 does not have any reference of bottles and crates in listed items, therefore, same could not be considered as plant and rather should be treated as stock-in-trade. Tribunal affirmed the order. On appeal the Court held that since 'bottles and crates' were used by assessee for bottling soft drinks manufactured by it, same would be included in definition of 'plant' and, thus, would be eligible for 100 per cent depreciation under section 32(1)(i) of the Act. Court also held that depreciation could not be disallowed merely on

argument of revenue that bottles and crates could not be included in definition of 'plant' as they do not fall under categories listed in Income-tax Rules, 1962. (AY. 1989-90)
Parle Bisleri (P) Ltd v. Dy. CIT(2022) 288 Taxman 673 (Bom)(HC)

S. 32 : Depreciation-Assets not available for physical verification-Cannot be the ground for disallowance of depreciation.

Held that depreciation claimed could not have been disallowed only on the ground that the assets were not immediately available for physical verification. (AY.2003-04)

PCIT v. Ajmer Vidyut Vitran Nigam Ltd. (2022)447 ITR 186 (Raj)((HC)

S. 32: Depreciation-Additional depreciation-Entitled to balance of additional depreciation not availed of in earlier year in subsequent assessment year.[S. 32(1)(iia)]
Held that the assessee is entitled to balance of additional depreciation not availed of in earlier year in subsequent assessment year..*(*AY.2007-08)

CIT v. Apollo Tyres Ltd. (No. 3) (2022)447 ITR 393 (Ker)(HC)

S. 32 : Depreciation-Business of hire purchase and leasing-Motor vehicles-Entitle to depreciation at 40 percent

Held that the assessee which is engaged in business of hire purchase and leasing, leased out motor vehicles as part of its business, assessee was entitled to claim higher depreciation at rate of 40 per cent than normal rate of 25 per cent in respect of vehicles so leased out. ICDS Ltd. v. CIT (2013 350 ITR 527 (SC) (AY. 2002-03)
CIT v. Lakshmi Vilas Bank Ltd. (2022) 287 Taxman 333/ 113 CCH 336 (Mad.)(HC)

S. 32 : Depreciation-Windmill-Generation of electricity-Entitle to additional depreciation [S. 32(1)(iia)]

Held that generation of electricity by windmill should be equated to term 'manufacturing or production of article or thing' and, therefore, assessee was entitled to claim additional depreciation on windmill installed as per provision of section 32(1)(iia) of the Act. Matter remanded (AY.2006-07)
S. Srinivasaraghavan v. ACIT (2022) 287 Taxman 398/114 CCH 312 (Mad.)(HC)

S. 32:Depreciation-Stock in trade-Fall in value of securities-Depreciation allowable.

Held that depreciation is allowable in respect of fall in value of securities held as stock in trade Followed Lakshmi Vilas Bank Ltd. v. CIT (2006) 284 ITR 93 (SC) (AY 2001-02, 2002-03)

CIT v. Lakshmi Vilas Bank Ltd. (2022) 287 Taxman 333/ 113 CCH 336 (Mad.)(HC)

S. 32: Depreciation-Lease of assets-Financial transactions-Failure to provide lease agreements-Matter remanded [S. 143(3), 254(1)]

On appeal, the High Court held that whether transactions were lease or financial transaction, it was necessary for assessee to place on record copies of lease agreements. Accordingly matter was to be remanded back to Tribunal for providing an opportunity to assessee to furnish required lease agreements. (AY. 1995-96 to 2000-01)

Maharashtra Apex Corpn. Ltd v. Dy. CIT (2022) 287 Taxman 310 /113 CCH 337 (Karn)(HC)

S. 32: Depreciation –Good will-Order of Tribunal-Binding precedent-Decision of Tribunal is binding unless there is stay [144C, 254(1), Art, 226]

The assessee challenged the draft assessment order on ground that Revenue had erred in seeking to disallow depreciation on good will overlooking the order of Tribunal in assessee's own case on the ground that decision of Tribunal was not accepted by Revenue and appeal is pending before High Court. The assessee filed writ petition. Allowing the petition the Court held that**,** Revenue had erred in seeking to disallow depreciation on goodwill by completely overlooking decision of Tribunal in assessee's own case. The stand taken by revenue that said decision had been appealed against and was not binding could not be accepted as unless there was a stay, decision of Tribunal would be binding on all income-tax authorities within its jurisdiction. Article 141 of the Constitution of India says that the law declared by the Supreme Court shall be binding on all courts within the territory of India. Therefore, it is the bounden duty of all authorities whether administrative or quasi judicial or judicial to follow the law declared by the Supreme Court. Principles of judicial discipline require that the orders of the higher appellate authorities should be followed unreservedly by the subordinate authorities. Unless there is a stay, the order or decision of the jurisdictional Tribunal is binding on all Income-tax authorities within its jurisdiction. Referred UOI v. Kamlakshi Finance Corporation Ltd (1992) Supp (1) SCC 443, Collector of Customs v. Krishna Sales (P) Ltd (1994) Supp (3) SCC 73, Ganesh Be nzoplast Ltd v. UOI (2021) 16 GST-OL 519/ (2020) (374) ELT 552 (Bom)(HC), Himagiri Buildcon and Industries Ltd v.UOI (2021) 16GSTR-OL 545 (Bom)(HC). (AY. 2018-19)

Mylan Laboratories Ltd v. Addl.JCIT (2022)446 ITR 734 / 287 Taxman 40 / 220 DTR 105/ 329 DTR 502 (Telangana)(HC)

S. 32 : Depreciation-Claim of depreciation as permissible-Deletion of disallowance was proper.

Assessing Officer disallowed claim of depreciation on premise that assessee had made a double claim as depreciation for relevant assessment years was claimed separately under head 'Social Overhead' over and above depreciation already claimed under section 32 of the

Act.Tribunal held that depreciation claimed in profit and loss account was depreciation claimed as per Companies Act, 1956 and was claimed by providing relevant depreciation schedule which was given as annexure to computation of total income and the assessee had added back depreciation as per profit and loss account and thereafter claimed depreciation which is permissible under section 32 of the Act. On appeal High Court affirmed the order of Tribunal. (AY. 2003-04, 2004-05, 2005-06)

PCIT v. Eastern Coalfields Ltd. (2022] 286 Taxman 487 (Cal)(HC)

S. 32 : Depreciation-Motor Vehicles-Additional depreciation-Charitable Trust-Operating buses to transport students to Schools-Not entitled to additional depreciation.[S. 11, 12A, ITR 1962, Appx. I, Item III-2(ii)]

The assessee was a trust registered under section 12A of the Income-tax Act, 1961. The trust was running a residential school. The assessee provided transport facility in the form of school buses for attending the school, picking up and dropping both students and teachers. The assessee claimed additional depreciation for the school buses operated by the assessee. The claim was rejected by the Assessing Officer, the Commissioner (Appeals) and the Tribunal. On appeal to the High Court held that the assessee trust was not entitled to additional depreciation on the buses.

Ebenezer International Foundation v. ACIT (2022) 444 ITR 547 / 285 Taxman 52 / 210 DTR 28 (Ker)(HC)

S. 32: Depreciation-Unabsorbed depreciation-Carry forward and set off-Finance Act, 2001 and Circular No. 14 Of 2001(2001) 252 ITR 65(St)(90)-Entitled to carry forward and set off depreciation loss of assessment year 1997-98 against income of assessment year 2006-07. [S. 32(2)]

Dismissing the appeal of the revenue the court held that the Tribunal was right in holding that the unabsorbed depreciation loss pertaining to the assessment year 1997-98 could be set off against income of the assessment year 2006-07 and directing the Assessing Officer to set off the unabsorbed depreciation pertaining to the assessment year 1997-98 beyond the period of eight years from the year of computation.(AY.2006-07)

CIT v. Venkateshwara Leather Pvt. Ltd. (2022)441 ITR 198 (Mad) (HC)

S. 32 : Depreciation-Building on lease-Expenditure on construction of building-Capital expenditure-Explanation 1 to section 32(1) [S. 30, 37(1)]

Held that where assessee had taken a building on lease and incurred expenditure towards construction of building leading to enduring benefits; expenditure incurred by assessee was capital in nature and same would come within mischief of Explanation 1 to section 32(1). Appeal of revenue is allowed.(AY. 2003-04)

CIT v. K.V. Nellaiappan. (2022) 285 Taxman 507 (Mad) (HC)

S. 32 : Depreciation-Leased assets-Entitled depreciation.

Held that the assessee is entitled to claim depreciation on assets leased to others.(AY. 2012-13

CIT LTU v. Canara Bank (2022) 285 Taxman 420 (Karn) (HC)
Editorial: Notice issued in SLP filed by the Revenue CIT v. Canara Bank (2022) 287 Taxman 462/ 114 CCH 321 (SC)

S. 32 : Depreciation-Beneficial owner-Car registered in the name of Director-Depreciation, TRO expenses and insurance charges are allowable as business expenditure [S. 37(1)]

Held that the assessee was beneficial owner of cars as it has made payment for acquisition of cars and hence was entitled to claim depreciation and other expenses on cars registered in name of directors. (AY. 2011-12)
PCIT v. Asian Mills (P.) Ltd. [2022] 285 Taxman 422 (Guj) (HC)

S. 32 : Depreciation-Generation of electricity-Entitled for additional depreciation [S. 32(1)(iia)]

Assessee which is engaged in generation of electricity from thermal power plant, it would be entitled for claiming additional depreciation under section 32(1)(iia) of the Act. Court also held that electricity needs to be construed as a movable property as it is capable of being transmitted and transferred etc. (AY. 2011-12)
PCIT v. Damodar Valley Corporation. (2022) 285 Taxman 236 (Cal) (HC)

S. 32 : Depreciation-Extraction and processing of iron ore amounts to production-Entitled for additional depreciation [S. 32(1)(iia), 32A]

Held that extraction and processing of iron ore amounts to production within meaning of word in section 32A(2)(b)(iii) hence entitle for additional depreciation. (AY. 2010-11)
PCIT v. Dhansar Engineering Co. (P.) Ltd. (2022) 285 Taxman 404 (Cal)(HC)

S. 32 : Depreciation-Unabsorbed depreciation-Period of carry forward-In view of amended section 32(2) by Finance Act, 2001 with effect from 1-4-2002, unabsorbed depreciation of assessment year 1997-98 could be allowed to be carried forward and set-off after a period of 8 years.[S. 32(2)]

Held that in view of amended section 32(2) with effect from 1-4-2002, unabsorbed depreciation of assessment year 1997-98 could be allowed to be carried forward and set-off after a period of 8 years without any limit whatsoever. (AY. 2008-09)
PCIT v. JCT Ltd. (2022) 285 Taxman 510 (Cal) (HC)

S. 32 : Depreciation-Increased cost of plant and machinery-Foreign Exchange rate fluctuations-Allowable.

Allowing the appeal of the assessee the Court held that the assessee is entitled to depreciation on increased cost of plant and machinery on account of foreign exchange rate fluctuations. (AY. 1994-95)

Ispat Alloys Ltd. v. Dy. CIT (2022) 284 Taxman 542 (Orissa)(HC)

S. 32 : Depreciation –Firm succeeded by company-Intangible assets-Successor assessee-company was entitled to claim depreciation on actual cost incurred by it with reference to such intangible assets. [S.35(2(AB), 47(xiii)]

Dismissing the appeal of the revenue the Court held that when a partnership firm was succeeded in its business by a company and there was a transfer of intangible assets by partnership firm to assessee in lieu of shares issued to partners of erstwhile firm, such transaction was covered under section 47(xiii) and, therefore, successor assessee-company was entitled to claim depreciation on actual cost incurred by it with reference to such intangible assets.(AY. 2005-06 to 2008-09)

Dy. CIT v. Padmini Products (P.) Ltd (2021) 133 taxmmann.com 174 (Karn) (HC)

Editorial : Notice is issued in SLP filed by the revenue; Dy. CIT v. Padmini Products (P.) Ltd. (2022) 284 Taxman 374 (SC)

S. 32: Depreciation – Additional depreciation- Claim not made in return- Subsequent letter the Assessing Officer – Justified in allowing the claim.

The assessee did not claim additional depreciation on the machinery installed and put to use in the return, but made the claim by a subsequent letter. The Tribunal held that CIT (A) has rightly allowed the claim of assessee. (AY. 2011-12).

Oswal Woollen Mills Ltd. v. Add. CIT (2022)98 ITR 521 (Chd) (Trib)

S. 32: Depreciation – Molasses Tanks- Matter remanded for verification .

Held, that the Assessing Officer was to allow the depreciation on molasses tanks making the correct computation in respect of new assets and the correct written down value of the molasses tanks, considering the submissions placed on record. The assessee was directed to furnish all the details and documentary evidence in support of its claim for due verification by the Assessing Officer to assist him in arriving at the correct amount of depreciation allowable on the molasses tanks.(AY.2012-13)

Sasamusa Sugar Works Pvt. Ltd. v. Dy. CIT (2022)98 ITR 235 (Kol) (Trib)

S. 32: Depreciation – Capital or revenue - Setting up of plant- Facts identical to assessee's earlier own case- Details of expenditure to be furnished for verification . [S. 37(1)]

Held, that the facts were identical with the assessee's own case for the assessment years 2013-14 and 2015-16. As the assessee had not provided any details in respect of the expenditure incurred towards layout of the plant and why it was necessary to be incurred, the

assessee was directed to file all relevant details in support of the claim, which would be verified by the Assessing Officer. (AY. 2016-17)
Toyota Boshoku Automotive India Pvt. Ltd. v .ACIT (2022)98 ITR 363 (Bang) (Trib)

S. 32: Depreciation – Matter remanded for verification.
Held, that the Assessing Officer was to examine whether the assessee was entitled to depreciation on the expenditure disallowed in past years as capital expenditure. (AY.2012-13)
VMware Software India P. Ltd. v .Dy.CIT (2022)98 ITR 219 (Bang) (Trib)

S. 32: Depreciation — Additional depreciation— Put to use less than 180 days - Balance additional depreciation of 10 Per Cent. can be claimed in succeeding assessment year. [S. 32(1)(ii), 32(1)(iia)]
Held that the assessee has claimed only 50 per cent. of the depreciation under the second proviso to section 32(1)(ii) in the year in which the plant and machinery was acquired and put to use for less than 180 days, and where the assessee is eligible to claim additional depreciation of 20 per cent. Balance depreciation can be claimed in the succeeding assessment year . (AY. 2015-16)

Dy. CIT v. Haldiram Snacks Pvt. Ltd. (2022) 98 ITR 75 (SN)(Delhi) (Trib)

S. 32 : Depreciation - Suspension of business activities- generation and sale of electricity – Kept the asset for ready to use -Eligible for depreciation – Interest disallowance – Matter remanded for verification. [S. 32(1)(ii), 36(1)(iii)]
Held that though the assessee has stopped its business of generation of electricity in the relevant year for commercial considerations and not completely abandoned the said business and kept the assets ready for use, claim for depreciation is allowable. Followed National Thermal Power Corpn. Ltd. v. CIT (2013) 357 ITR 253 (Delhi) (HC) , CIT v. Swarup Vegetable Products India Ltd. (2005) 277 ITR 60 (All) (HC). As regards the disallowance of interest the matter remanded to the Assessing Officer for verification . (AY.2013-14 , 2014-15)
Sambhav Energy Ltd. v. ACIT (2022) 220 DTR 305/ 220 TTJ 1147 (Jodhpur) (Trib)

S.32: Depreciation — Ownership of property — Possession oof property – Full payment was made – Registration was completed within six date of agreement - Ownership relates back to date of agreement .[Indian Registration Act, 1908, 23, 47]
Held, that the assessee was in possession of the property on leave and licence basis and was paying rent for the property. The same property which was on rent was purchased by the assessee on March 31, 2017 pursuant to agreement dated March 31, 2017 by making part payment. Full payment was made in the next financial year and registration was completed on April 6, 2017, i. e., within six days from the date of execution of the agreement. The sale deed having been registered in the name of the assessee six days after the date of execution of the agreement, in terms of sections 23 and 47 of the Indian Registration Act, 1908 , effectively the ownership related back to the date of agreement to the assessee. The assessee was in possession of the property exercising and having right to use and occupy property and would be construed as owner of the building though the deed of title was not executed. The assessee was eligible for depreciation under section 32 of the Act.(AY.2017-18)
Jet Freight Logistics Ltd. v. CIT (Appeals) (NFAC) (2022)99 ITR 37 (SN)(Mum) (Trib)

S. 32 : Depreciation -Unabsorbed depreciation - -Carry forward and set off- Could be set off during any number of years in view of the provisions of S. 32(2) as amended by Finance Act, 2001.[S. 32(2)]

Held that the unabsorbed depreciation of asst. yrs. 1997-98 to 1999-2000 would become part of depreciation of assessment year 2002-03 and subsequent years and therefore, the same could be set off during any number of years in view of the provisions of s. 32(2) as amended by Finance Act, 2001. (AY. 2008-09)

ACIT v. J. K. Fenner (India) Ltd. (2022) 220 TTJ 595 (Chennai)(Trib)

S. 32 :Depreciation —Commission – Liquidated damages – Deduction from sale consideration -Matter remanded. [S. 37(1)

As regards the claim of depreciation , commission , liquidated damages and deduction from sale consideration , the matter was remanded for verification. (AY. 2013-14)

TE Connectivity India P. Ltd. v . Dy. CIT , LTU (2022) 99 ITR 379 (Bang.)(Trib.)

S. 32 : Depreciation – Software - Eligible for depreciation at 60 per cent.

Held that the software purchased by the assessee was necessarily to be used along with computers and was eligible for depreciation at 60 per cent. The Assessing Officer was to allow depreciation of 60 per cent. on software.(AY.2013-14)

Roca Bathroom Products Pvt. Ltd. v. Dy. CIT (2022)100 ITR 65 (SN)(Chennai)(Trib.)

S. 32: Depreciation – Additional depreciation- Allowable only in the year of acquisition and installation- Capitalization of Foreign Exchange Loss incurred on acquisition of Plant and Machinery outside India- Additional cost capitalized not eligible for depreciation. [S. S. 32(1)(iia), 43A]

The Tribunal held that the assessee was not entitled to additional depreciation in the assessment year in question on the capitalized portion of foreign exchange loss incurred on plant and machinery acquired and installed during earlier financial years. (AY. 2010-11)

Daeseung Autoparts India Pvt. Ltd v. ACIT (2022) 97 ITR 76 ((SN) (Chennai)(Trib)

S. 32: Depreciation – Generation and distribution of power- Multiple units of Captive Power Plant- Adopting Straight Line Method- Accepted in previous and subsequent years- No change in facts- Directed to allow depreciation on Straight Line Method. [S. 32(1)(i)]

The Tribunal held that there was no rational and justifiable basis for the Commissioner (Appeals) to disturb the basis of allowing the depreciation on the written down value basis instead of the straight line method basis as claimed by and allowed to the assessee over the years where there was no change in the facts and circumstances of the case. The Assessing Officer was directed to allow the depreciation on straight line method . (AY. 2017-18)

SEl Manufacturing Co. Ltd v. Dy.CIT (2022)97 ITR 79 (SN) (Chd)(Trib)

S. 32 : Depreciation -Additional claim – Claim made by filing letter – Rejection of claim is not justified .

Held that where assessee made claim pertaining to additional depreciation on machinery installed and put to use through a letter and not through revised return, Assessing Officer was not justified in rejecting claim of assessee . (AY. 2011 - 12

ACIT v. Nahar Industrial Enterprises Ltd. (2022) 219 DTR 73 / 219 TTJ 544 / 99 ITR 562 / 142 taxmann.com 52 (Chd)(Trib)

ACIT v. Nahar Spinning Mills Ltd (2022) 219 DTR 73 / 219 TTJ 544/ 99 ITR 562 /142 taxmann.com 52 (Chd)(Trib)

ACIT v. Oswal Woollen Mills Ltd. (2022) 219 DTR 73/ 219 TTJ 544 /99 ITR 562 / 142 taxmann.com 52 (Chd)(Trib)

S. 32: Depreciation –Block of asset – Depreciation is allowable irrespective whether asset is used or not.[S. 2(11)]

Once Depreciation is allowed on a block of asset, it cannot be disallowed in the subsequent years on the grounds that asset is not in use. Order of CIT(A) is affirmed . (AY. 2012-13)

Dy. CIT v .Jagson International Ltd. (2022) 97 ITR 176 (Delhi) (Trib)

S. 32: Depreciation – Option to claim depreciation- Opting not to claim depreciation at rates specified in Appendix 1a- Eligible to claim depreciation according to Rule 5(1) and not Rule (5a)- The Assessing Officer is directed to allow W.D.V of depreciation. [R. 5(1), (1a), Appex. 1,IA]

Held, that the assessee was eligible to claim depreciation in terms of Rule 5(1) and not Rule 5(1A) of the Income-tax Rules, 1962. The Assessing Officer was to allow the depreciation according to the written down value of the assets as opposed to the straight line method adopted in the assessment order. (AY. 2003 -04 ,2006 -07 to 2008 -09)

Jindal Steel and Power Ltd. v. Add. CIT (2022)97 ITR 516 (Delhi) (Trib)

S. 32: Depreciation - Unabsorbed depreciation- Set-off - Disallowance was deleted. [S. 32(2)]

The Tribunal held that the Madras High Court had decided the issue in favour of the assessee in the case of CIT v. Tamil Nadu Small Industries Corporation Ltd. (T.C.A No. 236/2017) . In light of the decision of the Madras High Court, the Assessing Officer was directed to delete the disallowance and allow the setting off of unabsorbed depreciation. *(*AY. 2007-08)

Adm Agro Industries Latur and Vizag Pvt. Ltd. v. Dy. CIT (2022) 96 ITR 450 (Delhi)(Trib)

S.32: Depreciation-Foreign exchange loss-Loss disallowed as capital expenditure-Directed the Assessing Officer to pass consequential order allowing the depreciation.

In the matter of non-grant of depreciation on foreign exchange loss disallowed as capital expenses in AY 2009-10. The Tribunal held that the same is consequential to the order in AY 2009-10, and therefore, the Assessee is entitled to claim depreciation on foreign exchange loss disallowed as capital expenditure. Therefore, the AO was directed to allow the same.(AY. 2010-11, 2011-12)

Ul India Pvt. Ltd. v. Dy. CIT (2022)96 ITR 191 (Bang)(Trib)

S. 32: Depreciation – Cost of construction and Land – Special Economic Zone - Perpetual Sub–lease for 95 years renewable for further 95 years —Nominal yearly

ground rental of Re. 1- Stamp duty rate of proportionate Land during period of acquisition 35 Per Cent- Depreciation is allowable on balance consideration .

The Tribunal held that the consideration paid by the assessee could reasonably include not only the cost of construction of the building but also the cost of proportionate land. This sub-lease specifically provides that the four units were allotted to the assessee together with the proportionate land, that the nominal yearly ground rental of Re. 1 charged to the assessee was at a concessional rate in order to promote export industries in India. The agreement should be read as a whole and the consideration paid by the assessee was not only for the cost of construction of the four units but the same also included cost of proportionate land. To this extent, there was no infirmity in the order passed by the Commissioner (Appeals). It was further held that the Commissioner (Appeals) has placed reliance on the stamp duty rate of proportionate land during the relevant period of acquisition of the four units, which was quite reasonable, as only about 35 per cent. of the consideration was treated as a cost of proportionate land. There was no infirmity in the order passed by the Commissioner (Appeals) granting partial depreciation to an extent of Rs. 48,17,491 as against Rs. 65,61,664 claimed by the assessee. (AY. 2010-11, 2011-12)

Mohit Diamonds Pvt. Ltd. v. Dy. CIT (2022)96 ITR 12 (SN)(Mum.)(Trib.)

S. 32 :Depreciation—Personal use-No log book maintained- Disallowance of 20 percent for personal use is held to be proper. [S. 38(2)]

Held that in absence of any log book being maintained for the usage of vehicle by the proprietor and his family, the Assessing Officer disallowed 20 per cent. of depreciation on motor car as being attributable to personal usage of the asset in terms of provisions of section 38(2) of the Act. The Commissioner (Appeals) affirmed the order.(AY.2012-13)

Sanjay Subhashchand Gupta v. ACIT (2022) 95 ITR 89 (SN)(Mum) (Trib)

S. 32: Depreciation-Accessories entitled to higher rate of depreciation at 60 Per Cent.

Held that the assessee was entitled to depreciation at 60 per cent. because computers could not be run without their accessories such as UPS, printer, etc.).(AY.2006-07, 2007-08, 2008-09)

Expeditors International (India) Pvt. Ltd. v. Dy. CIT (2022)95 ITR 393 (Delhi) (Trib)

S. 32 : Depreciation –Additional depreciation-Windmill-Generation of electricity-Eligible to claim additional depreciation [S. 32(1) (iia)]

Held that activity of generating electricity by windmill would be manufacturing in nature, eligible to claim additional depreciation (AY. 2006-07)

DCIT (OSD) v. Vishal Export Overseas Ltd (2022] 197 ITD 459 (Ahd) (Trib.)

S. 32 : Depreciation-Intimation-Not claimed in the return by mistake-Rectification-As per Explanation 5 to section 32, even if depreciation was not claimed in return of income depreciation is allowable [S. 139. 143(1), 154]

The depreciation was not claimed in the return due to mistake. After receipt of the intimation the assessee had filed a rectification correcting the omission which had not been given effect. Held that as per Explanation 5 to section 32, even if depreciation was not claimed in return of income, assessee shall be allowed the same. Therefore, impugned disallowance

made under section 32 was to be deleted in view of Explanation 5 of said provision. (AY. 2016-17)
Indauto Filters. v. ADIT (2022) 197 ITD 660/ (2023) 102 ITR 403 (Bang) (Trib.)

S. 32 : Depreciation-Additional depreciation-Manufacturing switchgear products-tools, dies, jigs,etc.-Parts of machinery entitle to claim additional depreciation.

Held that tools, dies, jigs, etc. were used by assessee for its business of manufacturing switchgear products, thus, these tools etc. were not independent of plant and machinery but were parts of machinery, assessee was entitled to claim additional depreciation on such tools etc.(AY. 2012-13)
Efacec Switchgear India (P.) Ltd. v. ACIT (2022) 196 ITD 81 (Delhi) (Trib.)

S. 32 : Depreciation-Motor car-Not maintained log book for usage-Personal use – Disallowance of 20% of depreciation is affirmed.[S. 38 (2)]

Held thatassessee has not maintained any log book for usage of vehicle by proprietor and their family, 20 per cent of depreciation on motor car being attributable to personal usage is affirmed. (AY. 2012-13)
Sanjay Subhashchand Gupta. v. ACIT (2022) 196 ITD 493 (Mum) (Trib.)

S. 32: Depreciation-Non-compete fee-Intangible asset-Depreciation not allowable-Capital expenditure [S. 32(1)(ii)]
Assessee claimed depreciation on non-compete fees. The Assessing Officer disallowed the claim on the ground that non-compete fees were not in nature of the intangible asset as per section 32(1)(ii) of the Act. On appeal, disallowance was affirmed. (AY. 2014-15)
Sagar Ratna Restaurants (P.) Ltd. v. ACIT (2022) 195 ITD 88 (Delhi) (Trib.)

S. 32 : Depreciation-Purchase of ERP SAP software-Entitle to depreciation at 60 per cent.

Held that purchase of a license of ERP SAP software was entitled to depreciation on such license at a rate of 60 per cent. (AY. 2017-18)
Arkema Chemicals India (P.) Ltd. v. ACIT (2022) 195 ITD 486 (Mum) (Trib.)

S. 32 : Depreciation-Windmills-Second owner-purchase r used windmill which was installed before 31-3-2012-Not dismantled-Appendix-I of rule 5-Entitle for depreciation at the rate of 80 per cent.
Held that the assessee purchased a used windmill which was installed before 31-3-2012 and the assessee had become the second owner and had not dismantled it from one place and re-erected in another place, the assessee was to be allowed depreciation at a rate of 80 per cent on such windmill. (AY. 2015-16)
Senthil Energy (P.) Ltd. v. ITO (2022) 195 ITD 473 (Chennai) (Trib.)

S. 32 : Depreciation-Software development service –Machinery installed in office premises-Not manufacturing-Not entitle to addition depreciation [S. 32(1)(iia)]

Assessee claimed additional depreciation under section 32(1)(iia) on block of assets like Computers and Software. Assessing Officer disallowed claim of additional depreciation on premise that as per proviso 2B to section 32(1)(iia) any machinery or plant installed in office premises is not eligible for additional depreciation.Commissioner (Appeals) upheld disallowance of additional depreciation holding that assessee was not engaged in manufacturing or production of article or thing and hence was not entitled for additional depreciation. On appeal the Tribunal held that development activity carried on by assessee could not be considered as manufacturing activity. (AY. 2016-17)
Sling Media (P.) Ltd. v. DCIT (2022) 194 ITD 1 (Bang) (Trib.)

S. 32 : Depreciation-Good will-Amount paid in excess of net asset value for acquiring a business concern would constitute goodwill eligible for depreciation-Matter remanded.
Amount paid in excess of net asset value for acquiring a business concern would constitute goodwill eligible for depreciation-Matter remanded. (AY. 2016-17)
TUV Rheinland NIFE Academy (P.) Ltd. v. ACIT (2022) 194 ITD 78 (Bang) (Trib.)

S. 32 : Depreciation-Additional depreciation-Processing of milk and manufacturing of dairy products such as butter, ghee, pedha, etc-Business of manufacture or production of any article or thing-Entitle for additional depreciation. [S. 32(1)(iia)]

Assessee is a co-operative society engaged in processing of milk and manufacturing of dairy products such as butter, ghee, pedha, etc. During the year under consideration, assessee made addition to plant and machinery. Assessee claimed additional depreciation under section 32(1)(iia) of the Act. The Assessing Officer took the view that processing of milk does not fall under definition of manufacture and hence machinery purchased for processing of milk is not entitled for additional depreciation. Accordingly, he allowed additional depreciation on other machineries and disallowed additional depreciation claimed on machineries purchased for processing of milk. On appeal the Tribunal held that provision of section 32(1)(iia) only states that assessee claiming additional depreciation under section 32(1)(iia) should be engaged in business of manufacture or production of any article or thing etc., however, it does not state that new machinery or plant should itself be used in manufacture of any article or thing. Therefore, even though processing of milk will not result in manufacture of article or thing, assessee would be eligible for additional depreciation on plant and machinery used for processing of milk as assessee was a manufacturer engaged in production of dairy products and Assessing Officer had allowed additional depreciation on machineries used for manufacture of dairy products which clarified that assessee was engaged in business of manufacture or production of any article or thing.(AY. 2014-15)
Hassan Co-operative Milk Producers Societies Union Ltd. v. ACIT (2022) 194 ITD 522 (Bang) (Trib.)

S. 32: Depreciation-Block of assets-Cylinder-Asset sold-Reduced from Block-Return asset-Added to the asset block [S. 2(11), 32(1)(ii)]
The assessee sold cylinders to two entities that were returned during the relevant year. Before selling the cylinder, they formed part of the block of assets; consequently, on sales, they were reduced from the block of assets. On return, they would become part of the asset block. Hence, the assessee would be eligible for depreciation on the asset (cylinder) that will be added back to the asset block during the year under consideration. ((AY. 2011-12, 2013-14)

Refex Industries Ltd. v. Dy.CIT (2022) 216 TTJ 633/ 212 DTR 178 (Chennai) (Trib)

S. 32 : Depreciation-Solar plant-Put to use-Depreciation is allowable.[S. 32(1)(ii)]

Held that the depreciation is allowable on solar plant on the date of put to use on which power was produced and not when it supplied electricity to the grid. (AY. 2013-14 to 2015-16)

ACIT v. B..G. Channappa (2022) 64 CCH 56 / 216 TTJ 963/ 214 DTR 74 (Bang) (Trib)

S. 32 : Depreciation-Block of asset-Asset not put to use in the current year or subsequent year-Depreciation cannot be disallowed [S. 2(11), 32(2)]

Held that depreciation cannot be disallowed on any asset which is part of the block of asset and has suffered depreciation in the preceding year and even if the same is not put to use in the current year or subsequent years (ITA No. 409/ Kol/ 2020 dt. 1-8 2022)(AY. 2010-11)

Beeya Overseas Ltd v.DCIT (2022) The Chamber's Journal-September-P. 133(Kol)(Trib)

S. 32 : Depreciation-Non-compete fee-Intangible assets-Right in personam and not right in rem-Not entitle to depreciation [S. 32(1)(ii)]

Held that non-compete fee is not an intangible asset as per section 32 (1)(ii) and Explanation thereto hence not entitle to depreciation. Followed Sharp Business Systems v. CIT (2012) 211 Taxman 567 / 254 CTR 233 (Delhi)(HC). (TS-325-ITAT-2022(Delhi) (AY. 2014-15) (Dt. 31-3-2022)

Sagar Ratna Restaurants Pvt Ltd v. ACIT (2022) 195 ITD 88 (Delhi)(Trib)

S. 32 : Depreciation-Goodwill-Amalgamation of companies-Depreciation on goodwill acquired to be allowed. [S. 32(1)(ii), 43(1), 43(6)]

Allowing the appeal, that the assessee was the transferee company which did not have any goodwill in the books of account prior to amalgamation and the assessee acquired the goodwill post amalgamation. Goodwill arising on amalgamation was a capital asset eligible for depreciation. The consideration paid by the amalgamated company over and above the net assets of the amalgamating company should be considered as goodwill arising on amalgamation. The depreciation claimed by the assessee on goodwill acquired deserved to be allowed in accordance with law. The Assessing Officer was to compute depreciation in accordance with the principles laid down in CIT v. Smifs Securities Ltd (348 ITR 302 (SC) (AY. 2015-16)

Altimetrik India Pvt. Ltd. v. CIT (2022) 194 ITD 124/ 94 ITR 25 (SN)(Bang) (Trib)

S. 32 : Depreciation-Assets installed and kept ready-Depreciation allowable-Assets need not be used for whole year..

Held that it is not necessary that the plant and machinery owned by the assessee should be actually put to use in to claim depreciation. It is sufficient that the business is not closed or efforts are made to keep the business going. The Tribunal upheld the findings of the CIT(A).(AY. 2012-13).

ACIT v. Gopalpur Ports Ltd. (2022) 94 ITR 75 (SN) (Cuttack) (Trib)

S. 32 : Depreciation-Demerger-Acquisition of fixed asset-Denial of depreciation is not justified [S. 2(19AA, 43(1)]

The Tribunal held that the assets have been transferred from one government to another. There is no claim of the depreciation twice by both the Governments. The demerger led to division of assets in a fixed ratio and the same was duly accounted for, by both the entities as per the written down value (WDV) as on that date. The depreciation cannot be a forgone benefit owing to de-merger, which in this case is the result of state reorganization. (AY. 2012-13)

ACIT v. Uttaranchal Jal Vidyut Nigam Ltd (2022) 94 ITR 435 (Delhi)(Trib)

S. 32: Depreciation-Use of vehicle-Neither log book maintained nor any income earned during the year-Disallowance is justified-Legal expenses-No business carried on-Not allowable as deduction. [S. 37 (1), 38(2)]

Held, that since there was no business carried out by the assessee during the year, nor had it maintained a log book to co-relate the use of vehicles for business purposes, the disallowance made was justified. The assessee had not carried out any business activities during the year nor shown any business income. Therefore, the legal expenses claimed could not be wholly and exclusively for the purposes of business of the assessee *(*AY. 2012-13)

Jayant Maniklal Lunawat v. JCIT (2022)94 ITR 29 (SN)(Pune)(Trib)

S. 32 : Depreciation-Ownership of asset-Car loan-Vehicle registered in name of director-Vehicle used in business-Entitle to depreciation and interest paid on car loan [S. 37(1), Motor Vehicles Act, 1988]

Held that the vehicle was registered in the name of the director did not make any difference, inasmuch as the registration under the Motor Vehicles Act, 1988 was not conclusive evidence of the ownership of the vehicle. The term "ownership" under the 1988 Act was different from the ownership as envisaged under the provisions of section 32 of the Income-tax Act, 1961. There is no requirement under the provisions of section 32 of the Income-tax Act that in order to avail of depreciation, an assessee should be the registered owner of the vehicle. The assessee was entitled to depreciation under section 32 of the Act and the Assessing Officer was directed to delete the additions on account of disallowance of depreciation on car and interest paid on car loan.(AY. 2012-13)

Sehgal Autoriders Pvt. Ltd. v. Dy. CIT (2022)94 ITR 11 (SN)(Pune)(Trib)

S. 32: Depreciation-Lease rental-Eligible for depreciation subject to verification whether sum capitalised-Tourist Resort-Occupancy seasonal-Could not be construed to have used asset for less than 180 days-Depreciation allowable for entire year.

Held that the assessee was eligible for depreciation under Explanation 1 of the proviso to section 32 of the Act but the Assessing Officer was to verify whether the amount of addition had been capitalized, and then allow the depreciation. That the assessee was running a resort and it being a tourist place, the occupancy was not throughout the year but only in seasons favourable to tourists. Therefore, it could not be construed that the asset was used for less than 180 days. The Assessing Officer was to allow depreciation for entire year. (AY.2011-12)

Niyant Heritage Hotels (P.) Ltd. v ITO (2022)93 ITR 11 (SN)(Delhi) (Trib)

S. 32 : Depreciation-Additional depreciation –Put to use in earlier year-20 per cent of actual cost of plant or machinery-Put to use less than 180 days-50 percent of additional depreciation allowable. [S. 32(1)(iia)]

Assessee engaged in manufacturing of ball bearing and rubber products acquired and installed certain plant and machinery. Assessee claimed depreciation at rate of 50 per cent of allowable additional depreciation i.e. at rate of 10 per cent instead of 20 per cent of actual cost.Assessing Officer disallowed the additional depreciation on the ground that machinery was installed in earlier year. CIT(A) allowed the additional depreciation. On appeal the Tribunal held that very objective of insertion of a new proviso to section 32(1) is to remove discrimination and therefore it could be safely said that the same is just a curative amendment and even under section 32(1) there is no provision prohibiting balance additional depreciation in succeeding year. (AY. 2015-15)

DCIT v. National Engineering Industrial Ltd. (2022) 193 ITD 420 (Kol) (Trib.)

S. 32: Depreciation-Asset purchased from and leased back-Entitle depreciation-Assessment-Direction of the Tribunal to follow the Judgement of Special Bench-While giving effect High Court decided contrary to the Judgement of Special Bench-Assessing Officer is bound to follow the order of High Court-Asset purchased from and leased back-Entitle depreciation-Business expenditure-Amount of fees paid to ITC Classic Finance Ltd has direct nexus with acquisition of the machinery from RSEB-Allowable as deduction. [S. 50, 143(3), 254(1)]

Tribunal set aside the matter to the Assessing Officer and directed to follow the Special Bench in case Mid East Folio Management v.DCIT (2003) 87 ITD 537 (Mum) (SB) (Trib).

In the set aside proceedings the assessee relied on the judgement of Orissa High Court in Industrial development of Orissa Ltd v.CIT (2004) 268 ITR 130 (Orissa) (HC). The Assessing Officer disregarded the order of High Court and preferred to follow the Judgement of Special Bench. Order of Assessing Officer is affirmed by the CIT (A). On appeal the Tribunal held that the Assessing Officer ought to have followed the Judgement of Orissa High Court. Tribunal held that West Coast Paper Mills Ltd v.JCIT ITA No. 5403/B 99 dt 21-6 2005 which was affirmed by the High Court in case of CIT v. Apollo Finvest (I) Ltd (2016) 382 ITR 33 (Bom)(HC). Amount paid as fees to ITC Classic Finance Ltd has

direct nexus with acquisition of the machinery from RSEB-Allowable as deduction (ITA No. 5986/5987 /M.2006 dt. 27-5 2022 (AY. 1995-96, 1996-97)

Star Chemicals (Bom) Pvt.Ltd v. Dy.CIT (Mum)(Trib) www.itatonline.org

S. 32 : Depreciation-Computer software-Integrated part of computer system-Eligible depreciation at rate of 60 percent.

Tribunal held that since software purchased by assessee are embedded in computer system and thus construed as an integrated part of computer system, entitle depreciation at 60 percent.(AY. 2014-15)

Plintron Mobility Solutions (P.) Ltd. v. ITO (2022) 192 ITD 556 (Chennai) (Trib.)

S. 35 : Scientific research expenditure-Donations to research organisations-Deduction cannot be denied on the ground that registration granted was cancelled with retrospective effect.[S. 35(1)(iii)]

Dismissing the appeal of the revenue the Court held that in respect of amount paid to research organisation, universities etc deduction cannot be denied on the ground that registration granted was cancelled with retrospective effect in terms of Explanation to section 35(1)(iii) of the Act. (AY. 2013-14)

PCIT v. Maco Corpn. (India) (P.) Ltd. (2022) 289 Taxman 564 (Cal)(HC)

S. 35 : Scientific research expenditure-Weighted deduction-Expenditure incurred on in-house research and development facility-Entitled to weighted deduction. [S. 35(2AB)]

Expenditure incurred on in-house research and development facility is entitled to weighted deduction. (AY.2010-11)

PCIT v. Apollo Tyres Ltd. (No. 1) (2022)447 ITR 397 (Ker)(HC)

S. 35 : Scientific research expenditure-Expenditure towards clinical trials for availing of facility of its subsidiary abroad and at facility not approved by prescribed authority-Weighted deduction not allowable. [S. 35(2AB)]

The assessee was engaged in the business of manufacture of an article or thing, i. e., tyres and tyres not included in the Eleventh Schedule and the assessee had claimed expenditure on scientific research towards clinical trials for availing of the facility of its subsidiary in Germany. The claim of the assessee did not satisfy the second and third limbs of section 35(2AB), i. e., expenditure of scientific research on in-house research and development facility. The expenditure was more in the nature of revenue expenditure and the

expenditure was also incurred at a facility not approved by the prescribed authority. If such expenditure claimed by the assessee was allowed as weighted deduction then the words which have substantial meaning in section 35(2AB), i. e., in-house research and development facility as approved by the prescribed authority would become otiose. The assessee had failed to establish the essential requirements for claiming weighted deduction. (AY.2010-11)

PCIT v. Apollo Tyres Ltd. (No. 2) (2022)447 ITR 403 (Ker)(HC)
PCIT v. Apollo Tyres Ltd. (No. 3) (2022)447 ITR 431 (Ker)(HC)
Editorial: SLP of assessee dismissed, Apollo Tyres Ltd v.PCIT (2022) 447 ITR 8 (St)(SC)

S. 35 : Scientific research expenditure-Expenses of units which was entitle for deduction under section 10B-Entitle for deduction [S. 10B, 35(2AB)]

Allowing the appeal, the the Court held that the assessee would be entitled to claim deduction under section 35(2AB) in respect of expenses of its unit which was entitled for deduction under section 10B of the Act (S. 35) (AY. 2003-04)

Biocon Ltd v. Dy.CIT (2021)) 133 taxmann.com149 (Karn)(HC)

Editorial : Notice issued in SLP filed by the revenue, Dy. CIT v. Biocon Ltd. (2022) 284 Taxman 376 (SC)

S. 35 : Scientific research expenses-Approval was granted to R & D unit of on 17-6-2009 from 1-4-2007, denial of weighted deduction is held to be justified [S. 35(2AB)(3)]

Dismissing the appeal, the Court held that approval was granted to R & D unit of assessee on 17-6-2009 from 1-4-2007, denial of weighted deduction during relevant assessment years was justified. (AY. 2006-07 and 2007-08)
Apollo Tyres Ltd. v. ACIT (2022) 284 Taxman 687 (Ker.)(HC)

S. 35: Scientific research expenditure – Withdrawal of approval granted to institution-Approval valid at the time of donation- Entitled to deduction.[S. 35(1)(ii)]
Held, that subsequent withdrawal of such approval could not form a reason to deny deduction claimed by the donor. In the assessee's own case, the Tribunal had reversed the disallowance of the assessee's claim for deduction under section 35(1)(ii) in respect of a donation given to the same society. The order of the Commissioner (Appeals) vacating the disallowance of the assessee's claim of deduction under section 35(1)(ii) was to be upheld. Followed CIT v. Chotatingrai Tea (2002) 258 ITR 529 (SC), National leather Cloth Mfg .Co v. Indian Council of Agricultural Research (2000) 241 ITR 482 (Bom)(HC) (AY.2014-15)
ACIT v. Praveen Sushil Kanda (2022)98 ITR 345 (Raipur)(Trib)

S. 35 : Scientific research expenditure -Weighted deduction — Approved in-house research and development facility - Restriction of allowance to expenses approved by Department of Scientific and Industrial Research (DSIR) — Not justified. [S. 35(2AB]

The Assessing Officer restricted the allowance of weighted deduction under section 35(2AB) of the Income-tax Act, 1961 to the amount certified by the Department of Scientific and Industrial Research and rejected the balance claimed by the assessee. The Commissioner (Appeals) affirmed this. On appeals the Tribunal held that scientific research expenses incurred at an approved in-house research and development facility were eligible for weighted deduction under section 35(2AB) of the Act.(AY. 2013-14, 2014-15)

Eicher Motors Ltd. v .JCIT (2022) 98 ITR 84 (SN)(Delhi) (Trib)

S. 35 : Scientific research expenditure – Allocation of expenses – Research and development expenses on future products– Allocation of expenses is not justified. [S.80IA, 80IB, 80IC]

Held that the research and development expenses were incurred for future projects, the allocation of the said expenses incurred at head office level should not be apportioned to other units/undertaking unless the said expenditure relates to such an undertaking. (AY. 2009 10)

Macleods Pharmaceuticals Ltd. v. Dy. CIT (2022) 217 TTJ 763/ 214 DTR 105 (Mum)(Trib)

S. 35 : Scientific research expenditure - Product development- Eligible deduction-Expenses pertaining to the assembly line- Revenue expenditure. [S. 35(1)(iv) 37(1)]]

It was held that the product development expenses, expenditure towards customer trials, validations, feasibility study and eligible development stage expenses will be eligible for a deduction under S. 35 of the Act, the same being within the ambit of scientific research. I was held that expenses pertaining to assembly line are not capital but revenue in nature since they are pertaining to regular business activities of the assessee (AY. 2013 -14)

Mahindra Two Wheelers Ltd. v. Dy. CIT (2022) 219 TTJ 136 / 218 DTR 210 / 140 taxmann.com 367 (Mum) (Trib)

S. 35AB :Know-how-Technical know-how-Allowed in initial year-Balance of claim in succeeding 5 years should be allowed as deduction without adjudicating on admissibility of claim.

Held that once claim was allowed in first year of payment of lump sum consideration, balance 5 instalments had to be allowed as deduction in succeeding 5 years without necessity of looking into admissibility or otherwise of claim. (AY. 2000-01, 2001-02)

Mercedes -Benz India (P.) Ltd. v. DCIT (2022) 193 ITD 624 (Pune) (Trib.)

S. 35AD: Deduction in respect of expenditure on specified business-Hotels-Approval was delayed-The matter was to be remanded back to Assessing Officer with the direction that if the delay was established, the assessee was to be allowed deduction.

Assessee-company was engaged in the business of operation of hotels. During the year, the assessee developed and started operating a new hotel. Assessee claimed a deduction under section 35AD for expenditure incurred. The Assessing Officer denied the claim on the ground that assessee had obtained classification as a five-star hotel from a competent authority only during the next assessment year i.e., with effect from 21-3-2014 till 20-3-2019.

Assessee contended that it had applied for approval before competent authority much before commencement of business but authority had delayed in granting the same, thus, the assessee could not be denied the benefit of the deduction. On appeal, the Tribunal remanded the matter back to Assessing Officer and if the delay was established, the assessee was to be allowed a deduction under section 35AD of the Act. (AY. 2013-14)
Robust Hotels (P.) Ltd. v. DCIT (2022) 195 ITD 132 (Chennai) (Trib.)

S. 35AD: Deduction in respect of expenditure on specified business-Hotel-The assessee need not to construct entire building by itself or own building and land-Eligible deduction on the amount spent in the part of construction of building. [s. 35AD(4)]
Assessee engaged in business of running hotels and resorts. It claimed deduction under section 35AD on ground that it had incurred expenditure towards construction of new Five Star Hotel. The Assessing Officer disallowed the expenditure on the ground that the assessee did not build hotel building and had been operating same on leasehold land and building and intention of section 35AD is to promote fresh investment but not to accommodate old investments and give tax benefits. CIT (A) confirmed the disallowances. On appeal the Tribunal held that section 35AD do not specify that assessee has to construct entire building by itself or own building and land. Provisions only specify that specified business should be in nature of building and operating a new hotel of 2 star or above category as classified by Central Government. From lease deed produced by assessee it was apparent that assessee was also required to spend considerable amount for constructing a portion of building such as interior civil works, plumbing works, electrical works and other civil work relating to erecting equipments, elevators, firefighting equipment, etc. Therefore, it could not be said that assessee had not participated in constructing building, though basic civil structure was constructed by lessor. Therefore, where entire investment made by assessee was for constructing a portion of building and for operating a new hotel of category specified under Act, assessee would be entitled for benefit of deduction under section 35AD and accordingly, Assessing Officer was to be directed to grant deduction to assessee under provisions of section 35AD of the Act. (AY. 2012-13)
Taj GVK Hotels & Resorts Ltd. v. ACIT (2022) 193 ITD 304 (Hyd) (Trib.)

S. 35D : Amortisation of preliminary expenses-Premium collected on issued share capital-Not part of capital employed-includible in preliminary expenses for amortisation-Cost of acquisition of companies does not form part of project expenses-Deduction to be distributed in subsequent years [S. 37(1)]

Held that the Tribunal was right in holding that the share premium collected on the issue of share capital by the assessee could not be taken as part of the capital employed for allowing deduction under section 35D. That the Tribunal was right in holding that the cost of acquisition of companies could not be treated as asset for allowing deduction under section 35D. That the Tribunal was right in holding that the deduction under section 35D was to be distributed in the subsequent years. (AY.2009-10)

Subex Ltd. v. Add. CIT (2022)448 ITR 309 (Karn)(HC)

S. 35D : Amortisation of preliminary expenses -Amount paid to Registrar of companies — Third year of assessee — Deduction allowable .

Held that the assessment year 2011-12 was the third year of deduction under section 35D for amount paid to Registrar of Companies. In earlier years, one-fifth of the expenditure was allowed to the assessee by the Dispute Resolution Panel and therefore, conseuential deduction would allowable to the assessee in this year. The Assessing Officer was to verify and allow the proportionate expenditure as granted in earlier years.(AY.2010-11, 2011-12)
Triumph International (India) Pvt. Ltd. v. ACIT (2022)100 ITR 33 (SN)(Chennai) (Trib)

S. 35D : Amortisation of preliminary expenses -Expenses on initial public offer — Eligible deduction over five years .[S. 37(1)]
Held that the Commissioner (Appeals) held that the initial public offer expenses were covered under the provisions of section 35D(2)(c)(iv) of the Act and that the funds raised by the assessee were for long-term objectives and that the assessee was eligible to claim the deduction under section 35D of the Act over a period of five years. The assessee's claim to deduction of the entire expenses amounting to Rs. 1,95,00,000 was rejected by the Assessing Officer and the Commissioner (Appeals) as excess claim and the assessee was allowed to claim only one-fifth of the initial public offer expenses under section 35D and the remaining amount was to be amortised in subsequent years. The addition amounting to Rs. 1,56,00,000 as excess deduction under section 35D was justified.(AY.2013-14)
VKS Projects Ltd. v. ITO (2022)100 ITR 1 (SN)(Mum) (Trib)

S. 35D:Amortisation of preliminary expenses-Share capital to Public through initial public offer-Utilising 92 Per Cent. of receipts on working capital-92 Per Cent. of share issue expenditure allowable as revenue expenditure. Balance 8 Per Cent. to be treated as capital expenditure. [S.37 (1)]

Held that the assessee had utilised 92 per cent. of receipts on account of public issue on working capital. Hence 92 per cent. of Rs. 38 crores of share issue expenditure would be revenue expenditure and balance 8 per cent. which was spent on capital expenditure would not be treated as revenue expenditure. The proceeds utilized for capital expenditure were allowable under section 35D of the Act..(AY.2013-14, 2014-15)

ACIT v. PC Jewellers Ltd. (2022)93 ITR 244 (Delhi)(Trib)

S. 35DDA : Amortisation of expenditure-Voluntary retirement scheme-Accrued liability-Allowable as deduction [S. 43(2), 145]

The assessee implemented a Voluntary Retirement Scheme (VRS) for its employees. Liability towards compensation for employees covered under VRS worked out to Rs. 12.83 crores the said amount was amortized over a period of 60 months started from accounting year 2000-01 and this was reflected in balance sheet as at 31-3-2001. During assessment year 2001-02 assessee claimed deduction of Rs. 2,56,70,399, i.e., one-fifth of aforesaid amount of Rs. 12.83 crores. Assessing Officer disallowed claim of deduction of Rs. 2,56,70,399 and only allowed actual payment made during assessment years 2001-02, i.e., Rs. 17,22,059 and balance amount was treated as contingent liability on ground that what could not be ascertained or quantified could not be treated as expenditure.Commissioner (Appeals) affirmed order of Assessing Officer holding amortization of accrued liability as capital expenditure.-Tribunal concurred with view of Commissioner (Appeals) that only amount paid during year had to be taken into consideration and not entire amount payable under VRS. On

appeal the Court held that in view of definition of 'paid' under section 43(2) that contemplates an accrual liability Tribunal erred in treating liability under VRS not as an accrued one but in proceeding on basis that only amount actually paid during assessment year 2001-02 could be allowed. Order of lower authorities are set aside. (AY. 2001-02)
Tata Refractories Ltd v.CIT (2022) 286 Taxman 577/ 213 CTR 405/ 326 CTR 469 (Orissa)(HC)

S. 35DDA : Amortisation of expenditure-Voluntary retirement scheme-Slump sale-Allowable as deduction [S. 50B]

Assessee sold one of its division under slump sale and paid VRS payment to workers of said division. Assessee claimed VRS expenditure under section 35DDA. The Assessing Officer denied said claim. On appeal the Tribunal held that section 35DDA would not prevent assessee from claiming deduction with respect to VRS expenditure even in case of slump sale. (AY. 2005-06)
Peninsula Land Ltd. v. DCIT (2022) 193 ITD 366 (Mum) (Trib.)

S. 36(1)(ii):Bonus or commission-Bonus paid to directors to avoid dividend distribution tax-Services not rendered-Disallowance is held to be justified [S. 37((1))]

Dismissing the appeals the Court held that the simple test was whether had the bonus or commission not been paid, it would have added to the profits or dividend of the assessee. Therefore, the deduction was permissible only if the sum paid was bonus or commission for services rendered. There were only two directors and the entire amount had been paid to both of them by the assessee. There had not been any terms of employment nor any special services had been rendered by these two directors. The Assessing Officer and Commissioner (Appeals) had given a concurrent finding that the assessee had paid the bonus in lieu of the dividend and therefore, the sum was disallowed under section 36(1)(ii). Order of Tribunal is affirmed. (AY.2011-12, 2014-15)

SRC Aviation Pvt. Ltd. v. ACIT (2022)445 ITR 40 / 288 Taxman 159 (Delhi)(HC)
Editorial: Special leave to appeal to the Supreme Court, dismissed, SRC Aviation P. Ltd. v.ACIT (2022)449 ITR 169 / (2023) 290 Taxman 3 (SC)

S. 36(1)(iii) :Interest on borrowed capital-Investment company-Commercially expedient-Difference between interest received and paid by assessee for purpose of business-Deletion of disallowance was affirmed. [S. 37(1)]
Assessee is engaged in business of finance and investment. It adopted cash system of accounting. Assessee borrowed capital from its group concerns and paid interest at lower rate.It claimed deduction of interest paid on borrowed capital under section 36(1)(iii).Assessing Officer on basis of 'matching principles' made disallowance on account of difference between interest received and paid by assessee. Tribunal deleted the addition. On appeal the Court held that when cash system of accounting was adopted by assessee, an investment company, whose business was only to borrow and lend or invest, interest paid by

assessee on amount taken for utilising it for further lending was said to be in business interest or commercially expedient for purpose of business. Followed CIT v. Shriram Investments(2020)) 122 taxmann.com 74/ 422 ITR 528 (Mad)(HC) AY. 2015-16)

CIT v. Shriram Investments. (2022) 289 Taxman 315 (Mad)(HC)

S. 36(1)(iii) :Interest on borrowed capital-liquidatedi damages/pre-payment charges-Own interest free funds-Expenditure incurred towards payment of interest on borrowed funds was to be allowed as deduction.

Assessing Officer held that borrowed funds were utilized by assessee for non-business purposes i.e. investments in mutual funds and FDR's and thus was not allowable as deduction. CIT(A) allowed the deduction which was affirmed by the Tribunal on the ground that the assessee was under contractual restrictions in respect of utilization of borrowed funds; and was also liable to pay substantial amount of liquidated damages/pre-payment charges in case it made a prepayment of loan repayments. Due to contractual restrictions and liquidated damages/pre-payment charges, it was neither prudent for assessee to divert any part of borrowed funds for non-business purposes nor was it prudent to make pre-payment of loan even if assessee had its own interest free funds. On appeal by the Revenue the Court held that in absence of any contrary material on record, deduction claimed by assessee under section 36(1)(iii) was to be allowed for relevant years. (AY. 2013-14, 2014-15)

PCIT v. Power Links Transmission Ltd. (2022) 287 Taxman 327 /114 CCH 16 (Delhi)(HC)

S. 36(1)(iii) : Interest on borrowed capital-Working capital-Foreign exchange for working capital-Allowable as deduction.

Dismissing the appeal the Court held that the loan was obtained in foreign exchange for working capital and said loan was not utilized for making interest as observed by Assessing Officer. Order of tribunal is affirmed. (AY. 2008-09)

PCIT v. United Spirits Ltd. (2022) 442 ITR 451/ 284 Taxman 568 (Karn.)(HC)

S. 36(1)(iii) :Interest on borrowed capital-Borrowed money was used for the purpose of business-Expansion of business-Order of Tribunal is affirmed.

Dismissing the appeal the Court held that the observation of the Tribunal that the purchase of inventory in the course of carrying on business should be reckoned as continuation of the same business activity in the normal course and could not be equated or termed an extension

of business activity. Furthermore, the Tribunal noted that the assessee had offered substantial income from the Egmore project and the attempt to apply the matching principle concept was misconceived. The assessee was able to establish that substantial activities had been done in the project, which would go to show that the property purchased had been put to use. Order of Tribunal is affirmed. (AY.2015-16)

CIT v. Ceebros Hotels P. Ltd. (2022) 440 ITR 200/ 284 Taxman 205 (Mad)(HC)

S. 36(1)(iii) :Interest on borrowed capital-Unity control and management-Order of Tribunal is affirmed.

Dismissing the appeal of the revenue the Court held that the Tribunal was right is allowing the deduction. Followed Dy.CIT v. Core Health Care Ltd (2008) 298 ITR 194 (SC) (AY.1996-97)

CIT v. Maharashtra Hybrid Seeds Co. Ltd. (2022) 440 ITR 75/ 212 DTR 84/ 328 CTR 676 (Bom) (HC)

S. 36(1)(iii): Interest on borrowed capital – Advancement of interest free funds available in share capital form- Assumption that interest bearing funds utilized for interest free loans- Interest payment not to be disallowed

Held, that since the assessee had interest-free funds available with it in the form of share capital and reserves greater than the advances given to subsidiaries and related concerns on the presumption that no interest-bearing funds had been utilised for the interest-free loans and advances was available. Interest not to be disallowed . (AY.2007-08, 2010-11 to 2014-15).

Dy. CIT v. Wind World India Ltd. (2022)98 ITR 22 (Mum)(Trib)

S. 36(1)(iii): Interest on borrowed capital – Investment in quoted and unquoted shares-Own funds more than investments – Matter remanded for verification .

Held, that Assessing Officer has to go through the fund position namely capital and interest-free advances, reserves and surplus to determine whether any borrowed funds more than available own funds had been utilized and take a decision. If sufficient own funds were available, no disallowance to be made (AY. 2011-12).

Oswal Woollen Mills Ltd. v .Add. CIT (2022)98 ITR 521 (Chd) (Trib)

S. 36(1)(iii) :Interest on borrowed capital -Loans utilised for the purpose of business-Rule of consistency followed – Deletion of interest is affirmed .

Dismissing the appeal of the Revenue the Tribunal held that when the loans had been raised by the assessee in the course of his business of purchase and sale of lands and plots, buildings, shops, shares and securities and advancing of loans and advances, the interest expenditure thereon was clearly be allowable as a deduction under section 36(1)(iii) of the Act. The Department itself had been consistently allowing the deduction of interest expenditure on the loans in question for the immediately last two preceding years and for the AY. 2015-16. Therefore, there would be no justification in adopting an inconsistent approach in the absence of any shift in the facts during the year under consideration. FollowedRadhasoami Satsang v. CIT (1992) 193 ITR 321 (SC) CIT v. Excel Industries Ltd (2013) 358 ITR 295 (SC) Bharat Sanchar Nigam Ld. v. UOI (2006) 282 ITR 273 (SC) PR. CIT v. Quest Investment Advisors (P) Ltd. (2018) 409 ITR 545 (Bom)(HC). (AY. 2012-13)

Dy. CIT v .Arun Singhania (2022) 98 ITR 12 (SN)(Raipur) (Trib)

S. 36(1)(iii) :Interest on borrowed capital -Invested as share application money in another group company – Interest on bank loan not allowable as business expenditure . [S. 37(1)]

Held that the assessee has invested interest-bearing borrowed funds as share application money in another group company which is not a par of its regular business activity or in any way in furtherance of its business and shares not being allotted in three-four years. Interest paid on the bank loan not allowable as deduction . (AY.2010-11 to 2015-16)

Dy. CIT v. GVK Jaipur Expressway (P) Ltd. (2022) 216 TTJ 540 (Jaipur)(Trib)

S. 36(1)(iii) :Interest on borrowed capital -Partner – Interest paid on debit balance/ excess withdrawal – Withdrawn for payment of income tax – Allowable as deduction . [S. 153A]

Held that theinterest paid on debit balance/excess withdrawals from the partnership firm is to be deducted while computing the taxable income of the assessee-partner notwithstanding the fact that the impugned amount was withdrawn by the assessee for payment of income-tax. (AY.2015-16 to 2017-18)

Late Ghansham Dass through L/H Dawinder Singh v. Dy. CIT (2022) 210 DTR 65 / 216 TTJ 214 (Chd) (Trib)

S. 36(1)(iii) :Interest on borrowed capital - Premium paid maturity of foreign currency convertible bonds-Not debited to profit and loss account – Disallowance is not valid. [S. 145 , Companies Act, 1956]

Held that the premium paid on maturity of foreign currency convertible bond allowable as deduction, same could not be disallowed on the ground that the expenditure was not routed through the P&L account . (AY. 2012-13)

Dy. CIT v. Kanoria Chemicals & Industries Ltd. (2022) 215 TTJ 1003 (Kol)(Trib)

S. 36(1)(iii) :Interest on borrowed capital -Stock in trade – Allowable as deduction .

Held that theInterest paid on capital borrowed for acquisition of stock-in-trade is deductible irrespective of the fact that the said stock-in trade was sold or not during the relevant financial year.(AY. 2015 -16)

ITO v. ASSR Infrastructure (P) Ltd. (2022) 217 TTJ 24 (UO) (Chennai)(Trib)

S. 36(1)(iii) :Interest on borrowed capital – Mixed funds - Interest-free funds larger than interest-free advances – Disallowance of interest was deleted.

Held that all business receipts and payments of assessee routed through bank overdraft account .Interest-free funds available with the assessee is far in excess of investment in Mutual Funds, purchase of plot, construction, building, and loan to charitable organisations . Disallowance of expenditure was deleted. (AY.2010-11)

Allen Career Institute v. JCIT (2022) 99 ITR 269 (Jaipur) (Trib)

S. 36(1)(iii) :Interest on borrowed capital -Allocation of expenses -Assessee having sufficient interest-free funds available in year under consideration and when amount advanced to its sister concern —Deleting the addition was held to be justified .

Held, that the assessee had sufficient interest-free funds available sources in the year under consideration and the availability in the year when the amount was advanced to A which

advance admittedly was not in the year under consideration. Order of CIT(A) is affirmed . (AY.2010-11, 2012-13)
Dy. CIT v. Amber Enterprises (India) Pvt. Ltd. (2022)100 ITR 28 (Chd)(Trib)

S. 36(1)(iii) :Interest on borrowed capital -Sufficient interest free funds – Disallowance was deleted.
Held, that the assessee had sufficient interest-free funds and the Revenue had not co-related the interest-bearing funds used for non-interest bearing purposes. Besides in the subsequent year the interest was also not disallowed in the proceedings under section 143(3). Disallowance of interest was deleted.(AY. 2008-09)
Narendra Kumar Khandelwal v. ITO (2022)100 ITR 109 (Jaipur)(Trib)

S. 36(1)(iii) :Interest on borrowed capital - Interest-free advance given to subsidiary — No material placed on record by Assessee - Disallowance proper .

Held that interest free advance given to subsidiary . No material placed on record by Assessee . Disallowance is held to be proper . *(* AY.2013-14, 2014-15)

Dhanada Corporation Ltd. v. ACIT (2022)100 ITR 10 (SN) (Pune) (Trib)

S. 36(1)(iii): Interest on borrowed capital – Interest free funds – Interest free loans to subsidiary – Deletion of addition is justified .
Held that the interest free funds available is a sufficient ground to provide interest free loans to subsidiary company. Order of CIT(A) deleting the disallowance was affirmed . (AY. 2012-13)
Dy. CIT v. Jagson International Ltd. (2022) 97 ITR 176 (Delhi) (Trib)
United Spirits Ltd v. Dy.CIT (2022) 97 ITR 272 (Bang) (Trib)

S. 36(1)(iii): Interest on borrowed capital – Real income theory- Interest not accrued to assessee for two preceding year- Accepted by the Department- Disallowance of proportionate notional interest is not justified.[S. 145]
Held, that there could be no accrual of notional or imputed interest, and disallowance of interest paid to the extent of such notional or imputed interest had rightly been deleted by the Commissioner (Appeals). (AY. 2003 -04 ,2006 -07 to 2008 -09)
Jindal Steel and Power Ltd. v. Add. CIT (2022)97 ITR 516 (Delhi) (Trib)

S. 36(1)(iii) :Interest on borrowed capital - Loans and Advances to subsidiaries without charging Interest — Failure to prove for Commercial expediency — Disallowance of interest justified. [S. 37(1)]

The Tribunal held that the assessee had failed to provide any evidence to prove the commercial advantage derived by the assessee from its subsidiaries. The assessee has neither produced any detail to prove commercial expediency nor proved that the advances were given out of own funds. Order of disallowance was affirmed . (AY. 2011-12 to 2014-15)

BGR Energy Systems Ltd. v. ACIT (2022) 96 ITR 625 (Chennai) (Trib)
ACIT v. Sasikala Raghupathy (Smt) (2022)96 ITR 625 (Chennai) (Trib)

S. 36(1)(iii): Interest on borrowed capital - Bad Debt — Advance for purchase of material for stock-in-trade — Amount written off — Allowable as deduction. [S. 28 (i)]

The amount written off did not arise on account of sales but from the payment made on account of advance for purchase of stock-in-trade and not of any kind of fixed asset. He also dismissed the alternative plea for allowability under section 28 of the Act on the ground that the write-off was within three years and confirmed the action of the Assessing Officer. It was held that there was no dispute that the amount written off had been paid as an advance for the purchase of material for stock-in-trade. Advances written off were to be allowed. Allowable as deduction . (AY. 2012-13)

K. Patel International v. ACIT (2022)96 ITR 71 (SN) (Surat) (Trib)

S. 36(1)(iii): Interest on borrowed capital - Advancing borrowed money to sister concern for business purposes without charging interest — Interest expenses allowable as deduction. [S. 37(1)]

Assessee, a partnership firm, engaged in the business of finance and investments, which had diverted interest-bearing funds, without charge of any interest, to its sister concerns, the Tribunal held that unless the money advanced to the sister concern could not be held to had been advanced for commercial expediency of the assessee, the interest paid thereon by the assessee could not be disallowed under section 36(1)(iii) of the Act. (AY.2015-16)

Dy. CIT v. Shriram Investments (2022)95 ITR 111 (Chennai)(Trib)

S. 36(1)(iii) :Interest on borrowed capital -Interest-free funds far in excess of loan advanced—Disallowance of interest not warranted.

Held that interest-free funds far in excess of loan advanced. Disallowance of interest not warranted. (AY.2015-16)

Wanbury Ltd. v. Dy. CIT (2022)95 ITR 87 (SN)(Mum) (Trib)

S. 36(1)(iii) :Interest on borrowed capital – Amount advanced to sister concern – Interest recovered -Disallowance of interest is not justified.

The assessee, engaged in the real estate business, claimed a deduction of interest on overdraft account. The Revenue disallowed the interest and also included the entire interest in closing WIP in the books.

Held that such an addition made to the closing WIP and simultaneously disallowing interest expense is not sustainable and accordingly addition was set aside. The decision in assessee's own case followed which also elaborates the treatment under *AS 2- Inventories* that generally the interest shall not be added to the inventories as the same does not usually bring the inventories to the present location and condition.Further, the assessee transferred the funds

borrowed to certain sister concerns. The proportionate interest pertaining to such transferred funds was disallowed. Held that when the said interest was recovered by the assessee from sister concerns, such a disallowance was not sustainable in law. (AY. 2013 -14)
Milrco Good Earth Property & Development LLP v. ACIT (2022) 217 TTJ 52 (UO) / 142 taxmann.com 149 (Panaji) (Trib)

S. 36(1)(iii) :Interest on borrowed capital – Sufficient funds – Investment in shares – Disalloowance is not justified – Matter remanded.
Held that no fresh investment had been made by assessee during year under consideration and no interest expenditure had been incurred on account of investment in shares Matter was remanded to Assessing Officer to go through funds position namely capital and interest free advances, reserves and surplus to determine whether any borrowed funds had been utilized more than available own funds and if sufficient own funds were available, no disallowance was called for. (AY. 2011 - 12

ACIT v. Nahar Industrial Enterprises Ltd. (2022) 219 DTR 73 / 219 TTJ 544 / 99 ITR 562 (Chd)(Trib)
ACIT v. Nahar Spinning Mills Ltd (2022) 219 DTR 73 / 219 TTJ 544/ 99 ITR 562 /142 taxmann.com 52 (Chd)(Trib)
ACIT v. Oswal Woollen Mills Ltd. (2022) 219 DTR 73/ 219 TTJ 544 /99 ITR 562 / 142 taxmann.com 52 (Chd)(Trib)

S. 36(1)(iii) :Interest on borrowed capital – Real estate developer – Interet paid on overdraft – Closing stock and workin progress – Disallowance was deleted – Loan to subsidiaries – Recovered the interest paid on overdraft – Deletion of interest is affirmed.
The assessee, real estate developer, claimed deduction of interest paid on overdraft (OD) account with bank. Assessing Officer disallowed said claim of assessee and included entire amount of interest expenditure in closing stock of work-in-progress (WIP). Commissioner (Appeals) deleted the addition following the order of the earlier year. Order of CIT(A) is affirmed . Held thatsince assessee had recovered entire amount of interest that was charged by bank on amount which was advanced by it to its sister concern, claim for deduction of interest expenditure stood nullified in backdrop of corresponding interest income that was received from sister concern. (AY. 2013-14)
ACIT v. Milroc Good Earth Property & Development LLP (2022) 217 TTJ 52 (UO)/ 142 taxmann.com 149 ((Panaji)(Trib)

S. 36(1)(iii) :Interest on borrowed capital-Interest free advances to directors-capital reserve was more than the amount advanced and profit-Disallowance is not justified
Assessee-company provided interest free advances to its three directors. Assessing Officer made disallowance under section 36(1)(iii) of certain amount out of interest expenditure on premise that interest bearing funds had been utilized for interest free advances. Commissioner (Appeals) sustained disallowance. On appeal the Tribunal held that capital of assessee was more than Rs. 4.23 crores as on last day of accounting year and moreover profit was Rs. 41.70 lacs which was much more than the amount of interest free advances amounting to Rs. 15 lacs. Disallowance was not in accordance with law. (AY. 2006-07)
Kwality Zippers (P.) Ltd. v. DCIT *(*2022) 197 ITD 762 (Luck) (Trib.)

S. 36(1)(iii) :Interest on borrowed capital-Real estate construction-Method of accounting-Percentage completion method-Stock in trade –Work in progress-Allowable as deduction. [S. 145]

Assessee is engaged in business of real estate construction. It followed percentage completion method of accounting for revenue recognition and claimed interest cost incurred on its borrowings as deduction under section 36(1)(iii) of the Act. Assessing Officer held that expenses related to project were to be charged to cost of project and would be claimed as deduction when corresponding income of project was offered to tax and disallowed claim of assessee and added interest expense to work-in-progress. Held that since funds borrowed by assessee were for project undertaken by it which constituted its stock-in-trade and not capital assets, interest expenditure incurred on said borrowed funds was to be allowed in year expenditure was incurred irrespective of fact that assessee followed percentage completion method for revenue recognition . (AY. 2013-14, 2014-15)
DCIT (OSD) v. Sanathnagar Enterprise Ltd. (2022) 196 ITD 89 (Mum) (Trib.)

S. 36(1)(iii) :Interest on borrowed capital-Loans to Subsidiaries-Advance from out of interest free funds available with them at relevant point of time-Disallowance of interest is not valid.
Held that the assessee had filed necessary evidences to prove that there was a business connection between assessee and company to whom loans and advances were given and had placed all evidences to prove that interest free loans given to groups/subsidiary companies were out of interest free funds available with him at relevant point of time. Disallowance of interest is not valid. (AY. 2014-15)
G.E.T. Water Solutions (P.) Ltd. v. ACIT (2022) 194 ITD 779 (Chennai) (Trib.)

S. 36(1)(iii) :Interest on borrowed capital-Interest paid by assessee partner to a Firm on debit balance, on account of withdrawal for tax payment-Held disallowance not justified as the end use of withdrawn funds from firm is immaterial. [S. 153A]

Assessee had claimed deduction of Interest paid to firm on its excess borrowings from firm resulting into a debit balance. AO during assessment proceedings held that interest paid to firm is not allowable, as the amount withdrawn has been utilised for payment of advance tax and income tax which is the personal liability of the assessee. CIT(A) confirmed the disallowance. On Appeal, the Tribunal held that, disallowance of interest paid to firm on withdrawals from partnership firm, on ground that the said funds were withdrawn for payment of taxes which was personal liability of a partner cannot be sustained, for the reason that :

a) Once a partner has withdrawn an amount from firm, the end use thereof is immaterial.
b) It is not within the purview of the IT authorities to determine and dictate as to how the funds so withdrawn are put to use by assessee/partner.
c) The instant case is not of claiming an amount of tax on income. (AY.2015-16 & 2017-18)

Late Ghansham Dass Through L/H Davinder Singh.v. DCIT (2022) 216 TTJ 214 (Chad)(Trib.)

S. 36(1)(iii) : Interest on borrowed capital-Question of diversion of funds for non-business purposes would only come into play in case of interest free advance or loan to another company and not in case of investment in another company.

During the year, the assessee company had invested in shares of another company. The AO was of the opinion that the shares had been acquired using borrowed funds and the assessee failed to prove commercial expediency and therefore proceeded to make disallowance under section 36(1)(iii). On appeal, the assessee argued that it had made investments in a company in the same line of business and therefore the acquisition, funded by borrowed monies satisfies the criteria of commercial expediency. The CIT(A) concurred with the assessee's view and deleted the disallowance made by the AO. On appeal by the Department, the Hon'ble Tribunal adjudicated the matter in favor of the assessee holding that an investment in equity share capital of another company (whether in the same line of business or not) is different in nature and character from an interest free advance/ loan to another company. The question of diversion of funds for non-business purposes would only come into play in the case of the latter and not in the former. Further, whether such an investment yields returns in the present year or not also would not make a difference. (AY. 2017-18)

ACIT v. Rideema Toll Pvt. Ltd. (2022) 194 ITD 439/ 216 TTJ 1 / 211 DTR 1 (Mum)(Trib.)

S. 36(1)(iii) :Interest on borrowed capital-Addition made by simply suspecting that the amount of interest paid in excessive-addition cannot sustain as no strong reason given by the AO-Addition is not valid.

The assessee borrowed in his personal capacity and utilized the same in his business activities. Therefore, he claimed the interest paid as a deduction against the head income from other sources. Further the assessee also deducted TDS from all the payees and amount of interest were also paid to account payee cheque only. However, the AO disallowed the claim, without disputing the genuineness of the loan transaction. The CIT(A) confirmed the addition made by the AO on two counts i.e. the assessee not utilized the entire interest bearing borrowed funds for the purpose of making investment and the interest amount 'appeared' to be very high. However, the CIT(A) did not give any strong reason for such conf irmation of addition. On appeal before the Hon'ble ITAT, it was observed that the AO and CIT(A) ignored many material facts and financial statements of the assessee and held that the assessee had successfully proved the authenticity of the loan taken and interest paid thereon. Thereby the Hon'ble ITAT deleted the addition made. (AY. 2009-10)

Nikhil Garg v. ITO (2022) 95 ITR 92 /216 TTJ 33 (UO)145 taxmann.com 171(Jaipur) (Trib)

S. 36(1)(iii) :Interest on borrowed capital-Interest free loans to wholly-owned subsidiary-Commercial expediency-Interest on borrowed capital allowable as deduction

The Assessee had forwarded interest-free loans to its wholly owned subsidiaries out of its borrowed funds. The Tribunal upheld the order of the CIT(A) and relied upon various judicial precedents on the issue to hold that since the loans were extended for the purpose of its business, interest paid on borrowed funds cannot be disallowed u/s 36(1)(iii) of the Act.. (AY. 2016-17).

Moonrock Hospitality (P.) Ltd. v. ACIT (2022) 94 ITR 185 (Delhi) (Trib)

S. 36(1)(iii) :Interest on borrowed capital-Capital work-in-progress-Interest required to be capitalised-Matter remanded.

Held, that if a specific loan had been taken for purchasing an asset, notwithstanding that the assessee had sufficient interest-free funds, interest on such loan had to be disallowed within the ambit of proviso to section 36(1)(iii). It was only after exhausting the specific loans taken for the purpose of acquisition of an asset that the proposition of availability of shareholders' fund could be invoked for the balance amount of investment. The Commissioner (Appeals) was swayed by the assessee's submission that only a sum of Rs. 6.25 crores was taken as loan from bank for the two projects without actually examining the details and purpose of other loans. Therefore, the findings of the Commissioner (Appeals) were not sustainable and the matter was remitted to the file of the Assessing Officer for considering it afresh in terms of the discussions made. (AY. 2013-14)

ACIT v. Silver Jubilee Motors Ltd. (2022) 94 ITR 19 (Trib) (SN)(Pune) (Trib)

S. 36(1)(iii) :Interest on borrowed capital-Investments in acquisition of shares in companies to have controlling stake-Investment for purpose of business-No disallowance of interest expenses [S. 14A]

Held that investments in acquisition of shares in companies to have controlling stake. Investment for purpose of business. No disallowance of interest expenses.(AY. 2005-06)

Gujarat Nippon Enterprises Pvt. Ltd. v. ITO (2022)94 ITR 2 (SN)(Ahd)(Trib)

S. 36(1)(iii) :Interest on borrowed capital-Own capital and reserves more than capital advanced-Disallowance of interest is not justified.

Held, that the assessee's own funds being capital and reserves at the beginning of the financial year were much more than the capital advanced, no disallowance of interest could be made. (AY.2014-15)

ACIT v. Kalthia Engineering and Construction Ltd. (2022)93 ITR 30 (SN) (Ahd) (Trib)

S. 36(1)(iii) :Interest on borrowed capital-Strategic investments Joint venture company group and subsidiary companies-Disallowance of interest is not justified.

Held that investment was made on Strategic investments Joint venture company group and subsidiary companies. Disallowance of interest is not justified. *(*AY.2015-16)

PCI LTD. v. ACIT (2022)93 ITR 47 (SN) (Delhi) (Trib)

S. 36(1)(iii) :Interest on borrowed capital –Land-Interest cost on capital asset-Not put to use-Not allowable as revenue expenditure. [S. 43(1)]

Assessee purchased a piece of land from Gujarat Industrial Development Corporation. Assessee was required to make part payment for purchase of land in 12 quarterly instalments along with interest at rate of 12.5 per cent. Assessee treated amount of balance payment as loan in its books of account on which interest was incurred. Assessing Officer worked out amount of interest pertaining to such acquisition of land and added same to total income of assessee On appeal the CIT (A) held that interest directly related to capital assets being land and therefore same had to be capitalized. On appeal the Tribunal held that as per Explanation 8 to section 43(1) entire interest cost if incurred in connection with capital asset has to be capitalized. Therefore, where interest cost was incurred by assessee with respect to capital asset being land which was not put to use in year under consideration, it could not have been allowed as revenue expenditure. (AY. 2004-05 & 2011-12)
Khyati Chemicals (P.) Ltd. v. DCIT (OSD) (2022) 193 ITD 446 (Ahd) (Trib.)

S. 36(1)(iii) :Interest on borrowed capital-Own funds are more than interest free investment-No disallowance can be made.

The assessee had own funds which were far more than interest free investment made by it in optionally convertible debentures (OPCD), presumption would be that such investment was made from own funds. Disallowance of interest is not justified. (AY. 2015-16)
DCIT v. Macrotech Developer Ltd. (2022) 192 ITD 438 (Mum) (Trib.)

S. 36(1)(v) :Contribution to approved gratuity fund-Gratuity trust-Deed of variation pending for approval-Not allowable as deduction.[S. 43B]
Assessee claimed deduction on account of payment of gratuity. Assessing Officer denied said claim on ground that gratuity trust had no approval. Assessee claimed that gratuity trust was awaiting approval and non approval would not amount to non-recognition. Court held that original scheme which was approved under section 2 of Part-C of Schedule-IV of Act, 1961 had lapsed in relevant assessment year and assessee was seeking specific approval by submission of deed of variation. Disallowance is justified. (AY. 2003-04)
National Dairy Development Board v. Addl. CIT (2022) 220 DTR 273 / 143 taxmann.com 282 / (2023) 290 Taxman 181 /330 CTR 64 (Guj)(HC)

S. 36(1)(va): Any sum received from employees-Contribution to Employees Provident Fund and Employees' State Insurance Corporation-Delay in depositing-Deduction not allowable [S. 2(24)(x)]

Held that contribution to Employees Provident Fund and Employees' State Insurance Corporation held to be not allowable as deduction as there was delay in depositing.(AY.2013-14, 2014-15)

ACIT v. PC Jewellers Ltd. (2022)93 ITR 244 (Delhi)(Trib)

S. 36(1)(vii) :Bad debt-Amount offered as income-Written as bad debt in books of account-Debtor has shown as liability in its books of account-Allowable as deduction as bad debt.[S. 36(2)]

Dismissing the appeal of the Revenue the Court held that the amounts claimed as bad debts had been taken into account in computing income of assessee in previous year and offered for taxation and unrecovered amounts had been written off in books of account, claim of assessee could not be disallowed merely because debtor had shown amount as liability in its books of account. (AY.2008-09)

PCIT v. Nilgiri Financial Consultants Ltd. (2022) 289 Taxman 115 (Delhi)(HC)

S. 36(1)(vii): Bad Debts-Business loss-Amount paid to builder towards acquisition of commercial premises-Write off of the amount as irrecoverable neither allowable as bad debt nor as business loss-Assessee to prove both conditions of section 36(1)(vii) and 36(2) of the Act are satisfied-[S. 28(i) 36(2), 37 (1)]

The assessee is in the business of real estate development. The assessee advanced Rs 10 crore to C. Bhansali Developers Pvt Ltd for acquisition of commercial premises. The assessee contended that an amount was deposited with one developer towards acquisition of commercial premises two years prior to the assessment year in question (i.e., in 2007) and the project did not appear to make any progress, and consequently, the assessee sought return of the amounts from the builder. However, the latter did not respond. As a result, the assessee's Board of Directors resolved to write off the amount as a bad debt in 2009. The Assessing Officer disallowed the claim. On appeal before the CIT(A) the assessee contended that alternatively the claim may be allowed as business loss u/s 37(1) of the Act, however the CIT(A) affirmed the order of the Assessing Officer. On appeal referring to the object clause of the assessee allowed the claim of the assessee as business loss. On appeal High Court affirmed the order of the Tribunal. On appeal by Revenue, allowing the appeal the Court held that Section 36(1)(vii) of the Act gives benefit to the assessee to claim a deduction on any bad debt or part thereof, which is written off as irrecoverable in the accounts of the assessee for the previous year. This benefit is subject to Section 36(2) of the Act. It is obligatory upon the assessee to prove to the AO that the case satisfies the ingredients of both Section 36(1)(vii) and Section 36(2) of the Act. Court also held that on the facts of the case the advance written off is not allowable as business expenditure u/s 37(1) of the Act. (AY. 2019-10)

PCIT v. Khyati Realtors Private Limited(2022) 447 ITR 167/ 217 DTR 145 / 328 CTR 249 / 289 Taxman 60 (SC)
Editorial : Order in PCIT v. Khyati Realtors (P.) Ltd (2019) 108 taxmann.com 449 (Bom) (HC), reversed.

S. 36(1)(vii) :Bad debt-Amounts written off in accounts-Not necessary to prove that amount had become irrecoverable.

Held that amounts written off in accounts. It is not necessary to prove that amount had become irrecoverable. (AY.2004-05)
CIT v. Ing Vysya Bank Ltd. (2022) 448 ITR 94 (Karn)(HC)

S. 36(1)(vii) :Bad debt-Amounts written off in the books of account-Order of Tribunal is affirmed-Allowable as deduction.

Held that the Tribunal noted that there was no dispute to the fact that the debt was actually written off in the books of account in the AY under consideration namely, 2005-06. The Tribunal took note of the terms of the agreement between the parties and also the facts that the bad debts claimed by the assessee in the year under consideration were recovered in the subsequent AY 2006-07 and offered for taxation which fact could not be denied by the Revenue. The bad debt was deductible.(AY. 2005-06)

PCIT v. XPRO India Ltd. (2022) 446 ITR 668/ 217 DTR 265/ 328 CTR 593/ 289 Taxman 283 (Cal)(HC)

S. 36(1)(vii) :Bad debt-Required to debit profit and loss account and also to simultaneously reduce loans of debtors in balance sheet-Matter remanded. [S. 254(1)]

Court held that for allowability of bad debt the assessee is required to debit profit and loss account and also to simultaneously reduce loans of debtors in balance sheet. However none of the authorities had examined the issue in this angle in deciding the matter. Matter remanded to Tribunal. Referred Vijaya Bank v. CIT (2010) 323 ITR 166 (SC)

PCIT. v. United Spirits Ltd (2022) 284 Taxman 568/442 ITR 451 (Karn) (HC)

PCIT v. Mcdowell and Co. Ltd. (2022) 284 Taxman 568 /442 ITR 451 (Karn) (HC)

S. 36(1)(vii) :Bad debt-Non-banking finance company-Must arrive at bona fide decision that debt not recoverable-Commercial expediency-Lease rental-Allowable as deduction [S.36(2), 145]

Held that the written off lease rental amount had not been reversed from the income entry in Schedule-16. Writing off of the bad debt was in accordance with the provisions of section 36(1)(vii). The Commissioner (Appeals) had recorded in his order that the lessee company had become a sick company. Obviously, the prospects of recovery of lease rentals were quite bleak and the assessee considering that the debt could not be recovered in the foreseeable future had decided to write off a debt of Rs. 20.69 lakhs as bad debt during the previous year relevant to the assessment year 1991-92. The assessee had taken a business decision to write off the debt as a bad debt. The reversal of lease rentals of Rs. 20.69 lakhs, might be a change of the method of accounting by the assessee from mercantile to cash and might even be a breach of the accounting principles but it was not a requirement of section 36(1)(vii) for allowing a debt as a bad debt. A prudent practice had been adopted by a limited company of informing its shareholders about the remote possibility of recovery of the amounts and the decision to reverse and that it would be accounted for as and when received. The order of the Tribunal was set aside and the Assessing Officer was directed to allow the claim of bad debt of Rs. 20.69 lakhs. Once a business decision has been taken by the assessee to write off a debt as a bad debt in its books of account and the decision is bona fide, it should

be sufficient to allow the claim of the assessee. The method of accounting has no relevance to the issue. (AY.1991-92)

L. K. P. Merchant Financing Ltd. v. Dy. CIT (2022)447 ITR 507/ 288 Taxman 389 (Bom)(HC)

S. 36(1)(vii) :Bad debt-Deposit made with sister concern –Capital,loss-Interest income assessed as business income-Waiver of principal amount and interest accrued-Allowable as bad debt. [S. 28(i), 36(2)(i)]

Assessee made deposits/advances with its sister-concern in assessment year 2001-02. In relevant assessment year, after assessing financial condition of sister concern (MCCL) assessee waived off principal amount of deposit and interest accrued on it as bad debts. Assessing Officer disallowed assesee's claim of bad debts under section 36(1)(vii) on ground that assessee was not in business of lending money and non-recovery of deposit made to sister-concern would be a capital loss. On appeal CIT(A) upheld the order of Assessing Officer. Tribunal deleted the addition. On appeal by the revenue the Court held that since in initial assessment year interest income accrued on deposits made by assessee was taxed as business income, deposits would be assumed to be done in ordinary course of business. Since the condition required under section 36(2)(i) was satisfied by assessee it would be entitled to deduction of bad debts under section 36(1)(vii) of the Act. (AY. 2005-06)

PCIT v. Mahindra Engineering and Chemical Products Ltd (2022)285 Taxman 699/ 212 DTR 378 (Bom)(HC)

S. 36(1)(vii) :Bad debt-Objective decision-Debt has become bad within a short period of time not accepted by the Appellate Tribunal-Question of fact. [S. 158BC, 260A]
Dismissing the appeal the Court held that the claim of bad debts made by the assessee was found unacceptable by the Tribunal, inasmuch as for treating a debt as having turned bad, it was necessary to make an objective decision on the facts as to the impossibility of recovery of the debt, and such an opinion must be honest and ought to be made after taking into account all the relevant factors, whereas the opinion of the assessee was neither honest nor objective, keeping in view the relevant factors. Therefore, the Tribunal had rejected the plea of the assessee and confirmed the order of the Commissioner (Appeals.) No question of law arose.(BP 1-4-1987 to 22/23-12-1997)

Dr. K. Chandrasekaran v. CIT (2022) 441 ITR 413 (Mad) (HC)

S. 36(1)(vii) : Bad debt-Amount written off-Matter remanded for verification.

Allowing the appeal of the revenue, the Court held that where assessee had written off certain amount as bad debt in its books of account by way of a debit to profit and loss account, assessee was also required to simultaneously reduce corresponding amount from loans and advances or debtors depicted on assets side in balance sheet at end of year so as to be entitled to claim. Matter remanded. (AY. 2005-06)

PCIT v. United Spirits Ltd. (2022) 442 ITR 451 / 284 Taxman 568 (Kar.)(HC)

S. 36(1)(vii) :Bad debt -Unit sold as slump sale – Past advances written off relating to sold unit – Not allowable as deduction .

Held that as the Assessee having already transferred one of its units by way of sump sale, the assets liabilities stood transferred to the purchaser and, therefore. bad debts relating to the said unit written off during the relevant year cannot be allowed as deduction on the basis that the debtors were part of the assessee's residual assets. (AY. 2012-13)

Dy. CIT v. Kanoria Chemicals & Industries Ltd. (2022) 215 TTJ 1003 (Kol)(Trib)

S. 36(1)(vii) :Bad debt-Amounts are written off-AO can not disallow bad debts on the ground that the sum was prematurely written off. [S. 36(2)(i)]

Held that amounts written off cannot be disallowed on the ground that the amount was prematurely written off. (AY. 2014-15)

ACIT v. Syed Habibur Rehman. (2022) 195 ITD 480 (Delhi) (Trib.)

S. 36(1)(vii) :Bad debt-Finance business-Interest income assessed as business income-Merely because parties related, Loss written off could not be disallowed. [S. 36(2)]

Held allowing the appeal, that the assessee-firm was formed under a deed which specified its business of financiers. Merely because the parties were related parties, the loss incurred by the assessee by writing off of the sum could not be disallowed when there was no evidence of any collusion. Therefore, in view of the overwhelming evidence, such as the ledger account of the borrower showing advance of Rs. 10 crores, proof of earning interest income, repayment of sum, outstanding remaining of Rs. 2 crores, such sum being written off in the books of account, object of the partnership deed and past assessment records of the assessee, merely using the statement of the partner against the assessee for disallowance was not justified. The assessee having satisfied all the conditions of section 36(1)(vii) read with section 36(2) of the Act, the claim of the assessee was allowable. (AY.2014-15)

SDN and Co. v. ITO (2022)93 ITR 23 (SN) (Mum) (Trib)

S. 36(1)(vii) :Bad debt-Unutilized CENVAT and Service Tax credit-Not allowable as bad debt-Failure to establish irrecoverable during year under consideration the amount not allowable as business loss. [S. 28(i), 36(2), 37(1)]

Held that unutilized CENVAT and Service Tax credit could not be considered as trade debts of assessee, deduction for same on being written off could not be allowed under section 36(1)(vii), read with section 36(2). Further, since assessee had not been able to bring anything on record to establish that unutilized CENVAT and Service Tax credit amount in question had become irrecoverable during year under consideration, same could not be allowed as business loss in that year. (AY. 2015-16)
Meena Circuits (P.) Ltd. v. ACIT(2022) 193 ITD 318 (Ahd) (Trib.)

S. 36(1)(viia) :Bad debt-Provision for bad and doubtful debts-Schedule bank-Entitled to benefit of write off of irrecoverable debts under section 36(1)(vii) in addition to deduction of provision for bad and doubtful debts-Rural Branch-Matter remitted to Assessing Officer. [S. 36(1)(vii)]

Held that the claim of bad debts and bad and doubtful debts was an allowable deduction. Court also held that the Tribunal was correct in affirming the order of the Commissioner (Appeals) allowing the claim of provision created under section 36(1)(viia) in respect of advances made by 32 branches which were found to be not "rural branches" by the Assessing Officer. The matter was remitted to the Assessing Officer for a decision in accordance with law. (AY.2003-04)
CIT v. South Indian Bank Ltd. (No. 1) (2022)445 ITR 480 (Ker)(HC)
CIT v. South Indian Bank Ltd. (No. 2) (2022)445 ITR 530 (Ker)(HC)

S. 36(1)(viia) :Bad debt-Provision for bad and doubtful debts – No deduction is allowable on mere provision on gross basis – Bad debts should be actually written off in books of account – Matter remanded .
Held, that no deduction could be granted under section 36(1)(viia) on mere provision. The condition to claim bad debts was that the debts should actually be written off in the books of account. The provision made on gross basis without identifying the specific debtors would not entitle the assessee to claim this deduction. Since the Dispute Resolution Panel had not dealt with this issue and to bring on record the correct factual matrix, this issue was restored to the Assessing Officer for fresh adjudication with a direction to the assessee to substantiate its stand. (AY.2010-11, 2011-12)
Triumph International (India) Pvt. Ltd. v. ACIT (2022)100 ITR 33 (SN)(Chennai) (Trib)

S.36(1)(viia): Bad debt-Provision for bad and doubtful debts - Schedule bank - Mere provision of bad and doubtful debts when the same is made on an ad hoc basis will not constitute a write-off to claim deduction
Where the assessee made a provision for bad and doubtful debt on an ad-hoc basis in accordance with the statute dealing with the business of the assessee then the same is not allowable as a deduction since it is at most an unascertained liability and it is not clear for which particular account the provision is made. (AY: 2006-2007)
Tamil Nadu Generation and Distribution Corporation Ltd. v. ACIT (2022) 217 TTJ 108/ 213 DTR 313 (Chennai) (Trib)

S. 36(1)(viii) : Eligible business-Special reserve-Agricultural development-Eligible business-Dairy or animal husbandry activities-Providing long term finance to various dairy co-operatives engaged in producing milk-Not eligible to claim deduction.

Assessee was created by National Dairy Development Act. Assessee filed return and claimed deduction under section 36(1)(viii) on ground that it was a provider of long term finance for agricultural and industrial development. Assessing Officer denied said claim on grounds that notification declaring assessee as a financial institution was issued on 23-2-2004 which fell in subsequent assessment year. Assessee contended that advances provided to industry engaged in milk producing were to be construed as an industrial undertaking. Dismissing the appeal the Court held that amount of expenditure relatable to 'agricultural development' under section 36(1)(viii) would not include or extend by taking within its sweep dairy or animal husbandry activity and, thus, providing long term finance for industrial or agricultural development to various dairy co-operations could not be covered as long term finance extended for agricultural or industrial development. (AY. 2003-04)

National Dairy Development Board v. Addl. CIT (2022) 220 DTR 273 /143 taxmann.com 282 /(2023) 290 Taxman 181 / 330 CTR 64 (Guj)(HC)

S. 36(1)(viii) : Eligible business-Special reserve –Eligible profits-Interest income from Government securities-Apportionment of other income-Matter remanded for verification

Held that the assessee had reported all those other incomes under 'other income' category in financial statement prepared for relevant assessment years, however, it was not clear whether said other income were apportioned to eligible business and non-eligible business or not-Whether, therefore, matter was to be remanded back to file of Assessing Officer to examine claim of assessee and compute deduction only to other income which related to eligible business. (AY. 2011-12 to 2016-17)

Sundaram BNP Paribas Home Finance Ltd. v. DCIT *(*2022) 196 ITD 198 (Chennai) (Trib.)

S. 37(1): Business expenditure-Loss in hedging contracts with Foreign Exchange dealers and banks-Not speculative - allowable as business expenditure [S. 28(i), 43(5)]

Held thatthe High Court had not committed any error in affirming the Tribunal's view allowing the loss claimed by the assessee in hedging contracts with foreign exchange dealers and banks, arising out of foreign exchange rate fluctuations.CIT v. Woodward Governor India (P). Ltd (2009) 312 ITR 254(SC) followed (AY. 2009-10, 2010-11)

PCIT v. Vedanta Ltd. (2022) 448 ITR 732/ 219 DTR 154/329 CTR 265 (SC)
PCIT v. Matrix Clothing Pvt. Ltd (2022) 448 ITR 732 / 219 DTR 154/329 CTR 265 (SC)

S.37(1): Business expenditure-Capital or revenue-Leasing business-Foreign currency loan-Finance Indian enterprises in acquisition of Plant, Machinery and equipment - Loss due to fluctuation in foreign exchange rates-Allowable as revenue expenditure [S. 32, R.115]

Court held that the activity of the assessee of financing existing Indian enterprises for procurement or acquisition of plant, machinery and equipment on lease and hire purchase basis, was an independent transaction or activity being the business of the assessee. The transaction of loan between the assessee and Commonwealth Development Corporation was in the nature of borrowing money by the assessee, which was necessary for carrying on its business of financing. It was not for creation of an asset of the assessee as such or acquisition of an asset from a country outside India for the purpose of its business. In such a scenario, the assessee would be justified in availing of deduction of the entire expenditure or loss suffered by it in connection with such a transaction in terms of section 37 of the Income-tax Act, 1961. The loan was wholly and exclusively used for the purpose of business of financing existing Indian enterprises, who in turn, had to acquire plant, machinery and equipment to be used by them. It was a different matter that they may do so because of the leasing and hire purchase agreement with the assessee. That would be, nevertheless, an activity concerning the business of the assessee. The analysis and the conclusion arrived at by the Tribunal in respect of the claim of the assessee were correct. India Cements ltd. v. CIT [1966] 60 ITR 52 (SC) and Empire Jute Co. Ltd. v. CIT [1980] 124 ITR 1 (SC) applied. Court also observed that as a result of the entire claim of the assessee to the tune of Rs.3,56,57,727 having been allowed as revenue expenditure, the final assessment order passed by the Assessing Officer for the AY., had to be amended, thereby treating the consequential benefits such as depreciation availed of by the assessee in relation to the stated amount towards exchange fluctuation related to leased assets capitalised (being Rs. 2,46,04,418), as unavailable and non-est (AY. 1997-98)

Wipro Finance Ltd. v. CIT (2022)443 ITR 250/ 212 DTR 269 (SC)
Editorial: Decision in CIT v. Wipro Finance Ltd (2010) 325 ITR 672 (Karn)(HC) reversed.

S.37(1): Business expenditure-Fines-Penalty-Not compensatory in nature-Not allowable as deduction [Kerala General Sales tax Act, 1963, S.45A]

Dismissing the appeal of the assessee the Court held that in the absence of any material to show that any element of compensation was involved in the penalty imposed under section 45A of the Kerala Act the amount of Rs. 52 lakhs could not be termed as an expenditure for the year 2004-05. On appeal, Honourable Supreme Court affirmed the order of High Court. (AY. 2004-05)

PTL Enterprises Ltd. v Dy. CIT (2022)443 ITR 260/ 326 CTR 858/ 286 Taxman 564 (SC)
Editorial: Decision in PTL Enterprises Ltd. v Dy. CIT (2021) 439 ITR 365/(2022) 212 DTR 404 / 326 CTR 282 (Ker)(HC) affirmed.

S. 37(1): Business expenditure-Explanation 1-Freebies given to doctors-Prohibited by law-Disallowed as expense-Interpretation-Taxing statutes to be interpreted strictly--Strict interpretation should not result in absurdity contrary to intention of Parliament.[Medical Council Act, 1956, S. 20A, Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002, R. 6.8, Contract Act, 1872, S. 23, General Clauses Act, 1897, S.2(38), Indian Penal Code,1860, S. 40, 43]

Honourable Supreme Court held that pharmaceutical companies' gifting freebies to doctors, etc. is clearly "prohibited by law", and not allowed to be claimed as a deduction under Section 37(1) of the Act. Doing so would wholly undermine public policy. The well-established principle of interpretation of taxing statutes is that they need to be interpreted strictly and cannot sustain when it results in an absurdity contrary to the intentions of the Parliament. (SLP (Civil) 23207 of 2019 dated February 22, 2022) (AY. 2010-11)

Apex Laboratories Pvt. Ltd. v. DCIT. (2022)442 ITR 1 / 286 Taxman 200/ 211 DTR 73/ 325 CTR 121 (SC)

Editorial : Finance Act, 2022 amended the section 37 (1) provision with effect from 1-4-2022 clarifying that the expression " expenditure incurred by an assessee for any purpose which is an offence or which is prohibited by law.

S.37(1): Business expenditure-Cancellation of joint venture agreement-Compensation paid-Nexus between cancellation of JDA and execution of construction agreement-Allowable as deduction.

Assessee entered into joint development agreement (JDA) with one M to develop a land-Assessee later entered into a compensation agreement with Maheesh Bhoopathi towards cancellation of said JDA. Assessee found another business opportunity to develop a land which belonged to one Sunrise Reality & Leisure Pvt Ltd and assessee entered into an MoU with Sunrise Reality & Leisure Pvt Ltd to purchase its land. The assessee paid compensation to Maheesh Bhoopathi and claimed as revenue expenditure. Assessing Officer disallowed the claim, which was affirmed by the Tribunal. On appeal the Court held that since there was nexus between cancellation of JDA and execution of construction agreement, compensation paid is allowable as revenue expenditure. Followed S.A.Builders Ltd v. CIT (2007 288 ITR 1(SC), CIT v. Dalmia Cement (P) Ltd (2002) 254 ITR 377 (Delhi) (HC) (AY. 2008 09, 2009-10)

Nitesh Estates (P.) Ltd. v. ACIT (2022) 289 Taxman 45 (Karn)(HC)

S.37(1): Business expenditure-Donation of amount to BDC for construction of ring road-Allowable as business expenditure.

Assessee is engaged in business of extraction of minerals, made certain amount of donation to BDC for construction of ring road and claimed the same as deduction. On appeal by Revenue High Court held that since said expenditure was expended by assessee wholly and exclusively for purpose of its business, same was to be allowed as deduction. (AY. 2009-10)

PCIT v. Mysore Minerals Ltd (2022) 143 taxmann.com 219 (Karn)(HC)

Editorial: SLP of Revenue dismissed, PCIT v. Mysore Minerals Ltd. (2022) 289 Taxman 408 (SC)

S. 37(1): Business expenditure-Loss on investment in subsidiary-Expansion of business-Permanent diminution in value of investment made in equity shares-Allowable as business expenditure [S. 28(i), 36(1)(vii]

Assessee claimed loss on account of permanent diminution in value of investment made in equity shares in one of its subsidiaries in USA.. Assessing Officer disallowed the loss on the ground that loss was not allowable under section 37(1) since expenditure could not be considered as revenue expenditure. On appeal the Tribunal held that the expenditure was allowable as revenue expenditure. On appeal by Revenue the Court held that investment was made in subsidiary company in order to expand business with a view to earn higher profit. Order of Tribunal was affirmed (AY. 2012-13)

PCIT v. Vaibhav Global Ltd. (2022) 138 taxmann.com 506 (Raj)(HC)

Editorial : Notice issued in SLP filed by Revenue, PCIT v. Vaibhav Global Ltd. (2022) 289 Taxman 407 (SC)

S.37(1): Business expenditure-Consumption incentive-Ascertained liability-Provision-Allowable as deduction. [S. 145]

Dismissing the appeal of the Revenue the Court held that consumption incentive was discount offered by assessee to its advertisers for booking more advertisement space and assessee had provided detailed breakup of advertisers to whom consumption incentive was passed on. The liability being ascertained allowable as deduction. (AY. 2012-13)

PCIT v. TV Today Network Ltd. (2022) 289 Taxman 132 / 217 DTR 1/ 328 CTR 204 (Delhi)(HC)

S.37(1): Business expenditure-Road development-Public Road-Road belonged to Zila Parishad-Allowable as revenue expenditure. [S. 35E]

Assessee claimed expenses incurred for development of road which belonged to Zila Parishad as allowable business expenditure.Assessing Officer held that road belonged to Zila Parishad and it was only a coincidence that assessee used road for transportation and as road belongs to Government, expenditure could not be allowed as business expenditure. Tribunal allowed the claim of the assessee. On appeal dismissing the appeal of the Revenue the Court held that since assessee stood benefitted from construction of road from mine to railway station as coal could be efficiently and profitably transported, expenses incurred by assessee was to be allowed as same were incurred for business purposes even if road was a public road (AY.2003-04)

CIT v. Integrated Coal Mining Ltd.(2022) 288 Taxman 783 / 218 DTR 303/ 329 CTR 517 (Cal)(HC)

S.37(1): Business expenditure-Revised return-Revised computation claiming further loss during scrutiny assessment-Direction to consider the claim on merits is held to be justified [S. 139(5), 254(1)]

The assessee-company had claimed certain amount of business expenditure during original assessment proceedings and during scrutiny of assessment had filed a revised computation of income claiming further losses Tribunal directed the Assessing Officer to entertain claim on merits and decide the issue. On appeal High Court affirmed the order of the Tribunal and held that the Tribunal was justified in allowing said claim of deduction made through revised computation and not through a revised return of income since assessee had not claimed any additional deductions or exemption or made a fresh claim. Referred Circular No 14(XI-35 dt 11-4-1955, CIT v. Pruthvi Brokers & Shareholders (2012)349 ITR 336(Bom)(HC) (AY. 2008-09)

CIT v. Perlo Telecommunication and Electronic Components India (P) Ltd. (2022) 141 taxmann.com 387 (Mad)(HC)

Editorial: Notice issued in SLP filed by Revenue, CIT v. Perlo Telecommunication and Electronic Components India (P) Ltd. (2022) 288 Taxman 399 (SC)

S.37(1): Business expenditure-Transportation charges-Reimbursement of expenses-Disallowance is not justified.

Assessing Officer disallowed the amount incurred towards transportation charges. On appeal the Court held that confirmation letter issued by BDA addressed to assessee stated that RLD had issued credit notes of Rs. 4.91 lacs out of which Rs. 4.02 lacs was towards reimbursement of transportation charges (carriage inward) borne by assessee at time of delivery of stocks. Accordingly the disallowance of transportation charges was deleted (AY. 1998-99)

Maa Mangala Enterprises v. ITO (2022) 288 Taxman 124 (Orissa) (HC)

S.37(1): Business expenditure-Commission-Directors or relatives-None of them was shown to have any expertise in procuring Iron Ore Fines (IOF) from Indian markets-Disallowance is justified.

Assessee was engaged in business of manufacturing and sale of P.P. woven sacks meant for packing of fertilizer and cement etc. Assessee had obtained an export order for supply of Iron Ore Fines (IOF) and paid commission expenses to seven persons for procurement of quality IOF. Assessing Officer partly allowed commission expenses. On appeal, Commissioner (Appeals) as well as Tribunal dismissed appeal On appeal the Court held that all persons to whom commission was paid were either Directors of Company or their relatives and none of them was shown to have any expertise in procuring IOF from Indian markets for enabling assessee to meet purchase order placed on it for IOF. Order of Tribunal is affirmed. (AY. 2010-11)

Oripol Industries Ltd v. JCIT (2022) 288 Taxman 772/ 215 DTR 444/327 CTR 606 / (2023)451 ITR 379 (Orissa)(HC)

S. 37(1) : Business expenditure-Capital or revenue-Expenditure on software-Allowable as revenue expenditure.

Dismissing the appeal of the Revenue the Court held that the entire expenditure on software was deductible. (AY.2004-05)
CIT v. Ing Vysya Bank Ltd. (2022) 448 ITR 94 (Karn)(HC)

S.37(1): Business expenditure-Prior period expenses-Allowable as deduction [S. 145]
Held that prior period expenses allowable as deduction. (AY.2003-04)
PCIT v. Ajmer Vidyut Vitran Nigam Ltd. (2022)447 ITR 186 (Raj)(HC)

S.37(1): Business expenditure-Debenture at premium-Liability to be spread over period covered by debentures. [S. 145]
Held that though payment effected only on maturity of debentures the liabilities to the extent of loss suffered had to be applied in respect of each year covered by the debentures to an appropriate extent. Followed Madras Industrial Investment Corporation Ltd v. CIT (1997) 225 ITR 802(SC) *(*AY.1999-2000)
CIT v. Apollo Tyres Ltd. (No. 1) (2022)447 ITR 377 (Ker)(HC)

S.37(1): Business expenditure-Capital or revenue-Expansion of existing business-Expenditure on setting up new unit-Expenditure on feasibility study-Loan Processing fee and bank charges-Revenue expenditure.
Held that expenditure on setting up new unit, expenditure on feasibility study and loan Processing fee and bank charges are allowable as revenue expenditure. Relied on Alembic Chemical Works Co. Ltd. v. CIT (1989) 177 ITR 377 (SC).*(*AY.2010-11)

PCIT v. Apollo Tyres Ltd. (No. 2) (2022)447 ITR 403 (Ker)(HC)
PCIT v. Apollo Tyres Ltd. (No. 3) (2022)447 ITR 431 (Ker)(HC)

S.37(1): Business expenditure-Loss on foreign exchange forward contracts-Allowable as revenue expenditure.
Held that loss on foreign exchange forward contracts is allowable as revenue expenditure. *(*AY.2010-11)

PCIT v. Apollo Tyres Ltd. (No. 2) (2022)447 ITR 403 (Ker)(HC)

S.37(1): Business expenditure-Pre-paid expenses or advance payments-Entitled to claim expenses in the year in which incurred.

Held that pre-paid expenses or advance payments are entitled to claim expenses in the year in which incurred. *(*AY.2011-12)

PCIT v. Apollo Tyres Ltd. (No. 3) (2022)447 ITR 431 (Ker)(HC)

S.37(1): Business expenditure-Capital or revenue-Owner of Hotel-Compensation paid towards termination of agreement to receive back possession of building, furniture and fixtures-Allowable as revenue expenditure.
Held that there had been no addition of capital asset of enduring nature in the hands of the assessee and after the payment of the amount there had been no change in the capital structure of the assessee. It had paid the amount to get back possession of its own asset which had been given on licence basis under the hotel operator agreement and not for acquisition of

an asset that the assessee did not already own or possess. The expenditure was to facilitate its business and trading operations. The expenditure was revenue.(AY. 2006-07)

PCIT v. Elel Hotels and Investments Ltd. (2022)447 ITR 92/ 220 DTR 478 (Delhi)(HC)
Editorial: Order of Tribunal in PCIT v. Elel Hotels and Investments Ltd (2022) 28 ITR (Trib)-OL 616 (Delhi)(Trib), affirmed.

S.37(1): Business expenditure-Books of account and documents in custody of Central Bureau of Investigation-Assessing Officer has power and duty to requisition documents from another Public Authority-Disallowance of expenditure is not valid-Findings of Tribunal cannot be interfered with unless perverse or illegal.[S. 131, 260A]
Dismissing the appeal of the Revenue the Court held that the burden of proving that the expenditure was incurred "wholly and exclusively" for the purpose of business, is on the assessee. This burden needs to be discharged by the preponderance of probability. What should be the quantum and quality of evidentiary material to discharge such a burden is a matter lying in the discretion of the Assessing Officer and such discretion has to be exercised in accordance with the rules of reason and justice. Section 131 vests powers of a civil court in the Assessing Officer, inter alia, for compelling the production of books of account and other documents and for this purpose the section in many words equates him with a civil court. Exercising the powers of a civil court under the provisions of Order XIII of the Schedule to the Code of Civil Procedure, 1908, the Assessing Officer can send for the books of account and documents that are seized (by a Magistrate) in other proceedings. Courts have held that this power is coupled with a public duty to call for the assessee's books of account which are in the custody of a public authority. Relied on Sai Ramakrishna Karuturi v. UOI (2018) 402 ITR 7 (Karn)(HC), UOI v. State (1961) 42 ITR 753 (Cal)(HC) and E. M. C. (Works) Pvt. Ltd. v. ITO (1963) 49 ITR 650 (All)(HC).No substantial question of law. *(*AY.2009-10)

PCIT. v. Ennoble Construction (2022) 447 ITR 444 / 220 DTR 95 / 329 CTR 923 (Karn)(HC)

S.37(1): Business expenditure-Capital or revenue-Expenditure on improvements in leased premises to run fast food business-Allowable as revenue expenditure.

Dismissing the appeals of the Revenue the Court held that the expenses incurred on account of the modifications done in the various lease premises taken by the assessee for the purpose of its business did not create any new asset, that the expenditure of renovation and repairs of stores assumed a character of revenue in nature, that the expenditure incurred by the assessee was necessary for the purpose of business within the ambit of section 37(1) and that no new asset had come into existence were findings of fact based on consideration of relevant material on record.(AY.2012-13, 2013-14)

PCIT v. Jubilant Foodworks Ltd. (2022)447 ITR 29 (All)(HC)
Editorial : Dy.CIT v. Jubilant Foodworks Ltd (2022) 93 ITR 1 (Delhi)(Trib), affirmed.

S.37(1): Business expenditure-Expenditure prohibited by law-Amounts paid by Hospitals as referrals to Doctors-Not deductible-Interpretation of taxing statutes-Interpretation taking into account intention of legislature-Reassessment notice was quashed. [S. 147, 148, Art, 226, General Clauses Act, 1897, S. 2(38), Indian Penal Code, 1860, S. 43, Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002, R. 6.8]

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Held that a hospital is not eligible or entitled to get deduction on expenditure by way of commission to the doctors as "referral to doctors" for referring patients for treatment in its hospital as business expenditure under section 37(1) of the Act, in view of Explanation 1 to section 37(1) of the Income-tax Act, 1961, read with Circular No. 5 dated August 1, 2012 ([2012] 346 ITR (St.) 95) of the Central Board of Direct Taxes which is retrospective in nature with effect from December 14, 2009, and in view of the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002 under which such receipt by the medical practitioner is prohibited and violation of which invites punishment and disciplinary proceedings against doctors. However reassessment proceedings are quashed. (AY.2011-12, 2012-13) (SJ)

Peerless Hospitex Hospital and Research Center Ltd. v. PCIT (2022)447 ITR 60 / 326 CTR 249/ 213 DTR 81 / 287 Taxman 711 (Cal)(HC)

S.37(1): Business expenditure-Stock in trade-Interest paid towards broken period on such securities allowable as revenue expenditure.
Held that expenditure incurred towards broken period on such securities allowable as revenue expenditure (AY. 2002-03)
CIT v. Lakshmi Vilas Bank Ltd. (2022) 287 Taxman 333/ 113 CCH 336 (Mad.)(HC)

S.37(1): Business expenditure-Foreign travel expenditure-Directors-Failure to file any details-Justified in in disallowing 20 per cent of expenditure.
Held that the Assessing Officer was justified in disallowing 20 per cent of such expenditure. (AY. 2009-10)
Indian Metal and Ferro Alloys Ltd v. CIT (2022) 287 Taxman 320/212 DTR 177/ 326 CTR 161 (Orissa)(HC)

Editorial : SLP of assessee dismissed, Indian Metals and Ferro Alloys Ltd. v. CIT (2022) 289 Taxman 146 (SC)

S.37(1): Business expenditure-Capital or revenue-Laying pipelines for treatment of effluents of different industries-Amount spent in getting ISO certification-Revenue expenditure.
Held that the making of payments towards obtaining ISO certification in no manner touched the fixed capital of the assessee though it may create a positive image for particular product of the assessee-company which may ultimately smooth the conduct of the business of the assessee-company. However, the certification in no manner actually added to any gain in the fixed capital of the company. Expenditure allowable as revenue expenditure.(AY. 2010-11)
CIT (E) v. Narmada Clean Tech Ltd. (2022) 446 ITR 366 (Guj)(HC)

S.37(1): Business expenditure-Electricity charges-Allowable as deduction.
Held that though it was contended by the Revenue that the allowance of electricity charges incurred by the assessee as deduction, was violative of public policy within the meaning of Explanation 1 to section 37 of the Income-tax Act, 1961 the appellate authorities rejected the contention observing that the payment of operational lease rental was in terms of the lease arrangement between finance companies, LW and the assessee though measured in terms of

units of electricity consumed; and it was admittedly, for the consumption of electricity for business purposes; and there was no violation of the policies or guidelines by any of the parties to the lease agreement pointed out by the Electricity Board till date. The electricity charges were deductible.(AY. 1998-99, 2000-01 to 2003-04)

CIT v. Tube Investments of India Ltd. (2022) 446 ITR 676/ 288 Taxman 524 / 220 DTR 383 / 329 CTR 986 (Mad) (HC)

S.37(1): Business expenditure-Buy back of shares-Amount over and above face value of shares to departing group of shareholders-Allowable as revenue expenditure [S. 263]

Dismissing the appeal of the Revenue the Court held that in terms of directions issued by CLB, assessee-company paid certain amount over and above face value of shares to departing group of shareholders, amount so paid was to be allowed as revenue expenditure.Followed CIT v. Bramha Bazar Hotels Ltd (2015) 235 Taxman 195 (Bom)(HC) (AY. 2007-08)
PCIT v. Bramha Corp Hotels and Resorts Ltd(2022) 136 taxmann.com 398(Bom)(HC)
Editorial : SLP filed against order of High Court was to be dismissed as withdrawn. PCIT v. Bramha Corp Hotels and Resorts Ltd. (2022) 286 Taxman 265 (SC)

S.37(1): Business expenditure-Amount paid represented fee for participation in training programmes-Allowable as business expenditure [40A(9)]
Indian Institute of Coal Management (IICM) conducted education and training programmes for different corporate bodies in general and companies in coal sector in particular. Employees of assessee-company participated in management and technical development programmes, workshops and seminars conducted by IICM with a view to improve their skills and expertise against huge sum/certain fee which was shown under head 'Miscellaneous expenses'. Assessing Officer held that contribution to IICM was sum paid by assessee as an employer which was not allowable under section 40A(9) of the Act. On appeal CIT(A) affirmed the order of Assessing Officer. On further appeal the Tribunal held that payment made by assessee-company represented fee for participation in training programmes, organised by IICM and contribution made by assessee-company towards training had direct nexus with nature of business of assessee and, therefore, it was allowable as expenditure wholly and exclusively for purpose of business of assessee, since sum paid to IICM was crystalised as liability of assessee during relevant previous year, said sum, was revenue expenditure incurred for training of employees/executives and was not hit by provisions of section 40A(9) of the Act. Order of Tribunal is affirmed by the High Court. (AY. 2003-04, 2004-05, 2005-06)
PCIT v. Eastern Coalfields Ltd. (2022] 286 Taxman 487 (Cal)(HC)

S.37(1): Business expenditure-Expenses in providing free gifts Facilities to Medical Practitioners-Allowable as deduction-Expenses prohibited by law-Oppressive circulars would have prospective application.[S. 119]

Dismissing the appeal of the revenue the Court held that the Board's Circular No. 5 of 2012, dated August 1, 2012 (2012) 346 ITR 95 (St) could not have been applied retrospectively to the assessment year 2010-11. The circular imposed a new kind of imparity and therefore, the Tribunal had consistently held that the Board's Circular No. 5 of 2012 would not have any retrospective effect but would operate prospectively from August 1, 2012. These decisions of the Tribunal were not assailed before the High Court. The Tribunal was justified in deleting the expenses in providing free gifts facilities to Medical Practioners.(AY.2010-11)

PCIT v. Goldline Pharmaceuticals Pvt. Ltd (2022)441 ITR 543/ /210 CTR 57/ 324 CTR 640 / 286 Taxman 345 136 (Bom)(HC)

S. 37(1) : Business expenditure –Capital or revenue-Ware house business-Expenditure for raising floor height of Godown-Expenditure incurred to run the business profitably is revenue expenditure.

Where the assessee had incurred expenditure to conduct its business more efficiently and to increase its profits, while no new asset was brought into existence, it would be a revenue expenditure. (AY. 1991-92)

Jetha Properties Pvt. Ltd. v. CIT (2022) 440 ITR 524 / 209 DTR 201/ 324 CTR 326/ 286 Taxman 504 (Bom) (HC)

S.37(1): Business expenditure-Method of accounting-Incentive scheme announced to distributors and dealers-Liability arises upon announcement-Not a contingent-Ascertained liability-Allowable as deduction [S. 145]

Dismissing the appeal of the revenue the Court held tha**t** the view expressed by the Tribunal that the moment the scheme was announced there arose a liability on the part of the assessee to meet the expenses on the foreign tour of those dealers and distributors who were eligible, having satisfied the condition vis-a-vis achievement of sales targets during the last three years was correct. There being a binding contract under which the assessee had undertaken to bear the liability in respect of the foreign travel expenses of the distributors and dealers under the scheme, the liability was not a contingent liability, but an ascertained or definite one or a liability in praesenti, solvendum in futuro.(AY.1996-97)

CIT v. Maharashtra Hybrid Seeds Co. Ltd. (2022) 440 ITR 75/ 212 DTR 84/ 328 CTR 676 (Bom) (HC)

S.37(1): Business expenditure-Loss on account of fluctuations in rate of Foreign exchange-Deductible.

Foreign exchange loss on account of fluctuations in rate of foreign exchange is allowable as deduction. Followed. CIT v. Woodward Governor India (P.) Ltd (2009) 312 ITR 254 (SC).(AY.2005-06, 2008-09)

PCIT. v. United Spirits Ltd (2022)442 ITR 451 /284 Taxman 568 (Karn) (HC)

PCIT v. Mcdowell and Co. Ltd. (2022)442 ITR 451 284 Taxman 568 (Karn) (HC)

S.37(1): Business expenditure-Wholly and exclusively-And Expenditure benefitting third person-Incurred for the purpose of business-Allowable as deduction.

The assessee incurred the expenditure made towards Navodaya Grama Vikasa Charitable Trust with a description ”animator salary” under the directions of their controlling authority, i. e., NABARD. The Assessing Officer disallowed the expenditure. On extensive analysis of the factual aspects, the Tribunal arrived at a conclusion that though the assessee was promoting the formation of self-help groups in the districts of Dakshina Kannada and Udupi, and the loans were given to such self-help groups for home industries like candle-making, soap-making and such other activities, the income generated by such self-help groups came back to the assessee as deposits. The commercial exigency being established under the provisions of section 37(1) of the Act, the expenditure was allowed as deduction. On appeal to the High Court affirmed the order of Tribunal.Referred Sasoon J. David and Co. P. Ltd. v. CIT (1979) 118 ITR 261 (SC). (AY.2012-13)

PCIT v. South Canara District Central Co-Operative Bank Ltd. (2022)442 ITR 338 (Karn) (HC)

S.37(1): Business expenditure-Contractual liability-Expatriate cost-Matter remanded.

Court held that since no adjudication was made by Assessing Officer on aspect of any existing contractual liability between assessee and its employees, impugned order was to be set aside and matter was to be remanded to Assessing Officer for considering whether expenditure of expatriate cost should be given deduction from operating cost or not.(AY 2007-08)

AMD Far East Ltd v. Jt. DIT (IT) (2022) 285 Taxman 332 (Karn.)(HC)

S.37(1): Business expenditure-Provident fund, contribution to unrecognized provident funds-Allowable as deduction. [S. 36(1(iv), 40A(9)]

Held that contribution made towards superannuation fund was to be treated as business expenditure and, thus, same was to be allowed as deduction under section 37(1) even though said fund was unapproved under Employee's Provident Funds Act, 1952. (AY. 2007-08, 20011-12, 2012-13)

CIT v. Tamilnadu Maritime Board. (2021) 131 taxmann.com 250 (Mad)(HC)

Editorial : Notice issued in SLP filed against order of High Court, CIT v. Tamilnadu Maritime Board. (2022) 285 Taxman 283 (SC)

S. 37(1) : Business expenditure-Research and Development (R&D) expenses-Not produced documentary evidence-Matter remanded. [S. 35 (2AB)]

Court held that since assessee had not placed on record any documentary record to establish such R&D expenses incurred by it were towards its business, impugned order of Tribunal allowing such R&D expenses was to be set aside and matter was to be remanded.(AY. 2008-09)

PCIT v. United Spirits Ltd. (2022) 442 ITR 451 / 284 Taxman 568 (Kar.)(HC)

S.37(1): Business expenditure-Software licence expenses –Expenditure for software running system-Allowable as revenue expenditure.
Dismissing the appeal of the revenue the Court held that software licence expenses and expenditure for software running system is allowable as revenue expenditure. (AY. 2007-08 2008-09)

CIT v. Danfoss Industries (P.) Ltd. (2022) 284 Taxman 475 (Mad.)(HC)

S.37(1): Business expenditure-Provision on account of leave encashment-Not contingent liability-Allowable as deduction.

Dismissing the appeal of the revenue the Court held that, provision on account of leave encashment is not contingent liability. Allowable as deduction. Followed Metal Box Co.of India Ltd v. Their Workmen (1969) 73 ITR 53 (SC), Bharat Earth Movers v. CIT (2000) 245 ITR 428 (SC) (AY.1996-97)

PCIT v. Akzo Noble India Limited (No. 2) (2022) 440 ITR 190 / 286 Taxman 251 (Cal)(HC)

S.37(1): Business expenditure-Disallowance of part of expenditure-Based on facts-No question of law [S. 260A]
Dismissing the appeal the Court held that the Tribunal being the final fact finding authority the finding recorded by the Tribunal with respect to the quality of material, i. e, iron ore purchased by the assessee had relevance. It was clear that the attempt made by the assessee to establish that the lower grade of material purchased by the assessee required more extraction or rescreening charges was not supported by any material evidence. The issue having been considered extensively by the Tribunal, there was no ground to interfere with the factual findings recorded by the Tribunal.(AY.2009-10)
D. M. Sankar v. ITO (2022) 440 ITR 209 /284 Taxman 560 (Karn) (HC)

S.37(1): Business expenditure – Liquidated damages for delay- Liability supported by MOU- Allowable- Interest on loan taken by party paid by assessee – Interest not allowable.
Held, that the assessee had incurred a liability on account of liquidated damages which was supported by the memorandum of understanding for delay in commissioning of the project. There was no infirmity in the order of the Commissioner (Appeals) in allowing the claim supported by the debit note and the clauses of the agreement of memorandum of understanding and confirmation of disallowance which was not supported by any agreement.(AY. 2007 -08 , 2010 -11 to 2014 -15)
Dy. CIT v. Wind World India Ltd. (2022)98 ITR 22 (Mum)(Trib)

S.37(1): Business expenditure – Employer's benefit, repairs and maintenance, Other expenses, commission etc- CIT(A) restricting benefits of employees and legal and professional fees by 5%- Disallowance of 10% repairs and commission and discount-

Disallowance reasonable- Deletion of disallowance on manufacturing expenses- Order of CIT(A) is affirmed .

Held, that in each of the disallowances of employees' benefit, repairs and maintenance, other manufacturing expenses, commission and discount on sales and legal and professional fees as well as security service charges, complete details were not available on record but comparative analysis of expenditure was available. The Commissioner (Appeals) had applied his mind and applied a reasonable ratio to uphold the disallowance. No infirmity in order of CIT. (AY. 2007 -08 , 2010 -11 to 2014 -15)

Dy. CIT v. Wind World India Ltd. (2022)98 ITR 22 (Mum)(Trib)

S.37(1): Business expenditure – Payment for site development rights- Payment not genuine- Parties not having expertise- Report of expert backdated- Bogus expenditure- Disallowance justified.

Held, that when the payment for site development rights was not found to be genuine, the party to which payments had been made did not have any capability of performing such work, the report of the expert was found to be backdated and without any further evidence, the expert also did not visit the site or carry out any personal inspection, there was no doubt that the expenditure incurred by the assessee was bogus and the action of the Commissioner (Appeals) disallowing the expenditure was proper. (AY. 2007 -08 , 2010 -11 to 2014 -15)

Dy. CIT v. Wind World India Ltd. (2022)98 ITR 22 (Mum) (Trib)

S.37(1): Business expenditure – Expense towards community and social welfare activities- Expense allowable.

Held, that the expenses were towards the community and social welfare activities which had taken place in the vicinity of the work area of the assessee. The Assessing Officer failed to appreciate the nature of business of the assessee and the surrounding social environment where it had been carrying out its business. Therefore, there was no merit on the basis adopted by the authorities to disallow the claim of the assessee. Expense allowable as deduction . (AY. 2012-13)

Sasamusa Sugar Works Pvt. Ltd. v. Dy. CIT (2022)98 ITR 235 (Kol) (Trib)

S.37(1): Business expenditure - Capital or revenue — Expenditure on systems, applications and products software licence — Revenue expenditure- Sales tax provision -Matter remanded . [S. 145]

Held that the expenditure on systems, applications and products software licence is revenue expenditure. As regards the overall breakup of sales tax provision and sales tax account along with the details of the movement in that account, i. e., the opening balance, the provision created during the year, the provision written off during the year and payment made during the year, was provided before the Assessing Officer but these had not been verified by the Assessing Officer. Matter remanded for verification (AY. 2007-08, 2012-13)

ACIT (OSD) v. Danfoss Industries Pvt. Ltd. (2022) 98 ITR 8 (SN)(Chennai) (Trib)

S.37(1): Business expenditure - Payment made at check post and police charges — Expenditure in nature of offence or prohibited by law — Disallowance is proper. [S. 37 , Expln. 1]

Held that the assessee could not substantiate how payment was made at the check post and police charges was not covered under Explanation 1 to Section 37 of the Act. Since the

amounts paid at the check post and the police charges were expenditure incurred by the assessee which was in the nature of an offence or which was prohibited by law, there was no infirmity in the order of the Commissioner (Appeals) sustaining the addition.(AY. 2014-15)

Diwakar Logistics v. ACIT (2022) 98 ITR 24 (SN)(Hyd) (Trib)

S.37(1): Business expenditure - Discount -Computer generated Bills not containing signature of assessee or customer — Discount cannot be disallowed .

Held that the Assessing Officer had not denied the authenticity of the vouchers or invoices filed by the assessee during the assessment proceedings, but had stated that the said invoices did not bear the signature of the recipient who was benefitted by the discount. The assessee had substantiated its claim that the computer generated bills did not contain the signature of either the assessee or the customer. The Assessing Officer had not established that the assessee had received any sum over and above the net amount billed to the clients. Apart from the fact that these vouchers were unsigned, the Assessing Officer had failed to justify the disallowance claimed as handling charges or discounts given by the assessee to its customers . (AY. 2011-12)

ITO v. Quest 2 Travel.Com India Pvt. Ltd. (2022) 98 ITR 90 (SN)(Mum) (Trib)

S.37(1): Business expenditure – Legal and travelling expenses - Defence of Directors and Shareholders who were accused in case before CBI Special Court- Matter remanded .

The Assessing Officer had disallowed the expenses claimed by the assessee on the ground that the expenditure was not for its business purposes but only legal and travelling expenses incurred to pursue the directors and shareholders' case before the special CBI court, New Delhi. Tribunal held that at the time of assessment proceedings, the CBI judgement was not available before the Assessing Officer and therefore, there was no occasion for the Assessing Officer to examine the judgment of the CBI court and consider the issue whether or not legal and travelling expenses incurred by the assessee-company were eligible under section 37(1) of the Act. By the time the Commissioner (Appeals) passed the appellate order the judgment of the special CBI court was available but without considering it, he had confirmed the order of the Assessing Officer. To determine whether or not the expenses incurred by the assessee related to business and was eligible for deduction, the judgment of the special CBI court, where, the directors and shareholders of the assessee-company were accused, had to be seen. The order of the Commissioner (Appeals) was liable to be set aside and the matter remanded to the Assessing Officer to decide the issue afresh in accordance with law after examining the judgment of the special CBI court.(AY. 2012-13 to 2014-15)

Kalaignar TV Pvt. Ltd. v.ACIT (2022) 98 ITR 7 (SN)(Chennai) (Trib)

S.37(1): Business expenditure - Capital or revenue – Legal expenses – Allowable as revenue expenditure . [S. 269UC]

The assessee incurred expenditure on payment of legal fees to advocates and consultants to protect its business interest for which the details were furnished to the Assessing Officer. The expenditure had been incurred not to acquire or improve or extend possession or remove a defect in the title of fixed assets inasmuch as the assessee was not the owner of such asset.

Tribunal held that when litigation expenditure is incurred to protect the business, it is revenue expenditure. Since the assessee had no interest in the ownership of the asset but was in possession of the asset for conducting its business, the litigation expenditure incurred was to protect its business and, therefore, revenue expenditure and not capital expenditure.(AY. 2018-19)

Mangalam Arts v. Dy. CIT (2022) 98 ITR 63 (SN)(Jaipur) (Trib)

S.37(1): Business expenditure - Provision for warranty expenses – Matter remanded . [S. 145]

Held that neither the Assessing Officer nor Commissioner (Appeals) had examined the details filed before them during the set aside assessment proceedings or even remand proceedings by the Assessing Officer. They had simply noted that the assessee could not establish that all the conditions prescribed in the decision of the Supreme Court in Rotork Controls India Pvt. Ltd v.CIT (2009) 314 ITR 62 (SC) were satisfied. Even now, the assessee had not produced before the Assessing Officer or the Commissioner (Appeals) as to how the provision was based on historical trend and a reliable estimate as held by the Supreme Court. The assessee had filed the details before the Tribunal and accordingly, the matter was remanded for fresh verification . (AY. 2011-12 to 2013-14)

MRF Ltd. v. Dy. CIT (2022) 98 ITR 80 (SN)(Chennai) (Trib)

S. 37(1): Business expenditure - Provision for expenses on periodic overlay of BOT road- Ascertained liability - Any addition made towards such provision would enhance the taxable profit which is eligible for deduction under S 80IA(4)(i) - A revenue neutral exercise-Allowable as deduction .[S.80IA(4)(i)]

Held that the provision made for periodic wearing course overlay expenses on the basis of the report of an independent consultant is an ascertained liability allowable as deduction. Any addition towards provision would enhance the taxable profit which is eligible for deduction under S. 80-IA(4)(i) and would be a revenue neutral exercise. The assessee-company is required to maintain surface roughness of the expressway and relay the surface every five years as per the concessionaire agreement between the assessee and NHAI and, therefore, the provision made by the assessee for periodic wearing course overlay expenses on the basis of the report of an independent consultant is an ascertained liability allowable as deduction, more so as the AO has allowed similar claim in other assessment years. .(AY.2010-11 to 2015-16)

Dy. CIT v. GVK Jaipur Expressway (P) Ltd. (2022) 216 TTJ 540 (Jaipur)(Trib)

S.37(1): Business expenditure - Excess interest charged by Bank- Not allowable as deduction -Disallowance was restricted to the extent of the amount claimed as deduction during the year .- Corporate guarantee commission allowable as deduction .

Held that the excess interest charged by Bank cannot be said to be an expenditure incurred for the purpose of business. Disallowance was restricted to the extent of the amount claimed as deduction during the year .However the disallowance was restricted to the extent of the amount claimed as deduction during the year . Corporate guarantee commission allowable as deduction. The fact that the it was converted in to equity share capital by State Government did not change the character of the expenditure . (AY. 2019 -20)

Maharashtra State Road Development Corporation Ltd v. Add.CIT(2022) 218 TTJ 12(UO) (Mum)(Trib)

S.37(1): Business expenditure -Capital or revenue - Documents and stampcharges on conversion of debentures into equity shares – Capital expenditure - Alternative claim under section 35D is also rejected . [S. 35D]

Held that expenditure incurred for conversion of debentures into equity shares rightly treated as capital expenditure, the alternative claim of the asseessee for allowing deduction under section 35D in five equal instalments also rejected . Followed, Brooke Bond India Ltd v. CTT (1997) 140 CTR 598 / 225 TTR 798(SC) . (AY. 2014 - 15)

Sacmi Engineering India (P) Ltd. v. Dy. CIT (2022) 215 TTJ 1029 (Ahd)(Trib)

S.37(1): Business expenditure - Medical check-up provision for charges payable to hospitals-Matter remanded for verification- Escrow Disbursement Provision for incentive payable to distributors -The deduction for the incentive commission is to be allowed the package was sold as reduced by the payments made in respect of the on actual payment basis in the concerned year irrespective of the year in which packages sold in the earlier years. [S. 145]

Held that the CIT(A) allowed the deduction withoutcalling for the remand report of the AO. Order was set side to AO to decide the issue afresh. Held that the modus operandi of creating the EDP is totally flawed and against the accounting norms, in view of the fact that no scientific manner has been adopted by the assessee for the creation and maintaining the EDP, the deduction for the incentive commission is to be allowed the package was sold as reduced by the payments made in respect of the on actual payment basis in the concerned year irrespective of the year in which packages sold in the earlier years.(AY 2013-14 , 2014-15)

ACIT v. Indus Health Plus (P) Ltd. (2022) 220 TTJ 764 (Pune)(Trib)

S. 37(1): Business expenditure-Taxes paid abroad-Taxes for which no benefit of foreign tax credit has been allowed- Allowable as deduction . [S. 40(a)(ii), 90, 91]

Taxes paid abroad for which no benefit of foreign tax credit has been allowed in terms of S. 90/91 are allowable as deduction. (AY. 2013-14)

Capgemini Technology Services India Ltd. v. Dy. CIT (2022) 220 TTJ 409 (Pune) (Trib)

S.37(1): Business expenditure - Finance lease – Reclassified and claimed as deduction – Absence of details not allowed as deduction .

Held that once the amount of finance lease charges was reduced by the assessee by means of credit to the account, the same ought to have been reduced for the purpose of claiming deduction as well; in the absence of details of re-classification of the amount credited to finance lease charges, same is not allowable as deduction.(AY. 2013-14)

Capgemini Technology Services India Ltd. v. Dy. CIT (2022) 220 TTJ 409 (Pune) (Trib)

S. 37(1): Business expenditure — Entertainment expenses Disallowance was restricted to 10% - Held to be proper – Transfer pricing adjustment deleted by the CIT(A) was affirmed [S. 92C]

That the assessee having produced the ledger in respect of entertainment expenses where details of such expenditure had been inserted and submitted that the expenditure was genuine and recorded in its books of account, the assessee had produced sufficient evidence in support of its claim in respect of entertainment expenses. The order passed by the Commissioner (Appeals) did not call for interference. Tribunal also held tha there was no infirmity in the factual finding given by the Commissioner (Appeals) deleting the addition on the issue of the arm's length price and adjustment thereon rejecting the computation of the arm's length price by the Transfer Pricing Officer. (AY.2014-15)

Dy. CIT v. Manaksia Steels Ltd. (2022)99 ITR 12 (SN)(Kol) (Trib)

S. 37(1): Business expenditure-Post-production expenses of feature film- Producer and distributor - Allowable as business expenditure – Rule 9A or Rule 9B is not applicable . Reassessment on change of opinion is bad in law – Resale of set material - Estimated at 5 per cent of total cost incurred on such set materials. [S. 143(3), 147 , 148 Rule , 9A , 9B]

Post-production expenses of feature films are not governed by either under Rule 9A or 9B of the Act . The assessee having acted as a producer and distributor of a feature film, post-production expenses incurred by him are deductible under s. 37(1) of the Act . Tribunal also held that since there was no tangible material with the AO to form reasonable belief of escapement of income, except the audit objection on application of Rule 9A and 9B , cannot be said that there was failure on the part of the assessee to disclose fully and truly all facts necessary for completion of assessments, and therefore, the reassessment proceedings were not valid. Tribunal also held that In the absence of necessary details on record to apply a particular ate for estimation of income from resale of set materials of feature films produced by the assessee, the same is estimated at 5 per cent of total cost incurred on such set materials . (AY. 2004 -05 , 2006 -07)

ACIT v. A.M .Ratnam(2022) 215 TTJ 665 / 210 DTR 1 (Chennai)(Trib)

S.37(1): Business expenditure – Capital or revenue – Application software – Net working with 125 branches – Allowable as revenue expenditure .

Held that the purchase of an application software being core banking solution for networking its branches with centralized processing solution, the impugned expenditure only facilitates carrying on the business of the assessee more profitably without touching the profit-making apparatus of the bank and, therefore, the same is allowable as revenue expenditure.(AY. 2001 -02)

ACIT v. Kotak Mahindra Bank Ltd (As successor in business of eralt while, Vysya Bank Ltd (2022) 215 TTJ 409 /210 DTR 81 (Bang)(Trib)

S.37(1): Business expenditure - Expenditure is not substantiated with valid vouchers – Disallowance is affirmed .

Held that the expenditure is not substantiated with valid vouchers . Disallowance is affirmed (AY.2014-15)

Mahamedha Urban Co-Operative Bank Ltd. v. Dy. CIT (2022) 99 ITR 669 (Delhi) (Trib)

S.37(1): Business expenditure - Ex gratia payment — Deduction should be allowed although liability may have to be quantified and discharged at future date- Matter remanded . [S. 145]

Held that deduction should be allowed although liability may have to be quantified and discharged at future date. Matter remanded to apply principle laid down in Bharat Earth Movers v. CIT (2000)) 245 ITR 428 (SC).(AY. 2009-10, 2010-11)

Karnataka State Beverages Corporation Ltd. v. ACIT (2022) 99 ITR 325 (Bang) (Trib)

S. 37(1): Business expenditure — Financial assistance to meritorious students- Not contingent – Allowable as deduction - Capital or revenue - Expenditure for new electricity connection and Meter cost - Internet networking expenses - Payment to Municipality for name transfer fee -allowable as revenue expenditure - Expenses incurred for extension of height of existing boundary wall — Capital expenditure- Fines and penalties — Expenses for regularisation of construction of old building — Penalty imposed by Urban Improvement Trust on account of unauthorised construction — Not allowable as business expenditure .[S. 145]

Held, that the scheme has been designed with a view to encourage and provide financial assistance to the meritorious students. The assessee as a part of its advertisement and promotional scheme had been floating scholarship schemes in the past and also in the later years, as was also done in the current year. The assessee used to organise a big level function in the honour of the successful students, during the course of which they were awarded certificates with cheques.. Similar schemes were floated and the outstanding was claimed as a liability and no similar disallowance had been made in the past. In the absence of any change in the facts and in the circumstances of the case, the liability towards the amount payable under the scholarship scheme was rightly claimed and the authorities below were not correct in disallowing it. Held that expenditure for new electricity connection and Meter cost, Internet networking expenses ,payment to Municipality for name transfer fee is allowable as revenue expenditure . Expenses incurred for extension of height of existing boundary wall is capital expenditure. Expenses for regularisation of construction Penalty imposed by Urban Improvement Trust on account of unauthorised construction is not allowable as business expenditure *(* AY.2010-11)

Allen Career Institute v. JCIT (2022) 99 ITR 269 (Jaipur) (Trib)

S. 37(1): Business expenditure — Capital or Revenue Expenditure — Payment for acquisition of application software — Revenue expenditure.

Held that the period of licence could not be the basis to decide whether the expenditure was capital or revenue expenditure. The test to be applied was whether the expenditure was incurred to facilitate the conduct of business more efficiently in its operation and not in the capital field. The assessee rendered software development services and therefore the use of the software was in its operations and not in the capital field and in that view of the matter, the expenditure in question deserved to be allowed in full.(AY.2014-15)

Altisource Business Solutions Pvt. Ltd v .ITO (2022) 99 ITR 647 (Bang) (Trib)

S. 37(1): Business expenditure — Credit card expenses of employee — Matter remanded for verification .

Held that if the assessee had not entered into the transaction with the bank as reflected in the credit card statement, the Assessing Officer ought to have examined the assessee's consistent denial through external sources. The Assessing Officer was directed to carry out detailed

examination whether the transactions were entered into by the assessee and, if found not so, the additions deserved to be deleted.(AY.2010-11)
Capgemini India Pvt. Ltd. v. Dy. CIT (2022) 99 ITR 506 (Mum)(Trib)

S.37(1): Business expenditure - Miscellaneous expenditure — Ad Hoc disallowance-Deletion is held to be proper .
Held, that the Commissioner (Appeals) had gone through the assessment records and found that the assessee had filed complete details of the miscellaneous expenses with invoices on a sample basis before the Assessing Officer during the course of assessment proceedings. Since no defects were pointed out by the Assessing Officer in the books of account or documents produced by the assessee, the ad hoc disallowance made by the Assessing Officer had been rightly deleted by the Commissioner (Appeals).(AY. 2009-10 to 2012-13)
Dy. CIT v. Mahendra Brothers Exports Pvt. Ltd. (2022) 99 ITR 537 (Mum)(Trib)

S. 37(1):Business expenditure – Capital or revenue expenditure – Temporary structure – 100% depreciation is allowable .[S. 32]
Following the ratio in Indus Motors Pvt Ltd v. Dy .CIT (2016) 382 ITR 503 (FB) (Ker)(HC) , wherein the court held that whether the expenditure is capital or revenue has to be decided on the facts of the case applying the relevant tests . Appeal of the Revenue was dismissed . (AY. 2016 -17)
ACIT v. PSN Automative Marketing (P) Ltd (2022) 100 ITR 69 (Cochin) (Trib)

S. 37(1):Business expenditure — Employees' Stock Option Scheme —Deducted tax at source in respect of share-based compensation under taxed in hands of employees as perquisite — Cross-charge expenses — Allowable as deduction- Assessing Officer was directed to verify whether amount subject to tax deduction at source- Matter Remanded [S. 15, 17(1))40(a)(i), 192, 195]

Held, that employees' stock option expenses were deductible under section 37 of the Act. However, the Assessing Officer was to verify whether the amount had been subject to tax deduction at source under section 192 or section 195 as claimed by the assessee. Matter remanded.(AY.2016-17)

EIT Services India Pvt. Ltd. v. Dy CIT (2022)100 ITR 490 ((Bang) (Trib)

S.37(1): Business expenditure -Capital or Revenue — Advertisement expenses not debited to Profit and loss account but accounted in balance-sheet as "Capital Work-In-Progress (Brand Building expenditure)" — Allowable as deduction . [S. 145]
Dismissing the appeal of the Revenue the Tribunal held that the Assessing Officer had not challenged the genuineness of expenses incurred by the assessee. Advertisement or brand building expenditure was revenue nature and there was no concept of deferment of revenue expenditure in the Income-tax Act, 1961 . The Commissioner (Appeals) had not erred in allowing the assessee's appeal and holding that the advertisement expenditure claimed by the assessee as revenue expenditure in the revised return of income was allowable.(AY.2009-10)

ACIT v. Rosebys Interiors India Ltd. (2022)100 ITR 4 (SN)(Ahd) (Trib)

S.37(1): Business expenditure - Provision for slow or non-moving and obsolete inventory - A separate provision in this regard, could not be allowed to the assessee- Liability not crystallised is not allowable as deduction. .[S. 145]

Held that since the assessee valued inventories at the lower of cost price or net realisable value which was the prescribed method of valuation of inventories, no further deduction of provision would be admissible to the assessee since any decrease in value of inventories at year-end would be subsumed in the method of valuation adopted by the assessee. In other words, when the valuation was on the lower of cost or net realisable value any decrease in the value of obsolete or slow moving stock on the valuation date would automatically take care of the loss suffered by the assessee on this account. Accordingly, a separate provision in this regard, could not be allowed to the assessee. Tribunal also held that the Liability not crystallised is not allowable as deduction. (AY.2013-14)

Roca Bathroom Products Pvt. Ltd. v. Dy. CIT (2022)100 ITR 65 (SN)(Chennai) (Trib)

S.37(1): Business expenditure - Restatement of foreign exchange loss — Assessing Officer directed to verify and allow.

Held that the Assessing Officer was to verify and allow the assessee conseuential deduction with regard to restatement of foreign exchange loss for Rs. 547.14 lakhs. The assessee was to provide the requisite information.(AY.2010-11, 2011-12)
Triumph International (India) Pvt. Ltd. v. ACIT (2022)100 ITR 33 (SN)(Chennai) (Trib)

S.37(1): Business expenditure – Capital or Revenue – Non -compete fee – Amortised – Depreciation claimed – Capital expenditure .[S. 32]
The Tribunal affimed the findings of the Assessing Officer that the non-compete fee consideration was nothing but a part consideration for purchase of shares. Hence, the expenditure cannot be allowed as revenue deduction. (AY. 2017-18).
Adler Mediequip Pvt. Ltd v. Dy.CIT (2022)97 ITR 20 (SN) (Pune) (Trib)

S.37(1): Business expenditure – Capital or revenue - Payment for subscription services of software- No acquisition of software- Telephone and internet expenses- Allowable as revenue expenditure .
The Tribunal held that the payments were made for subscription services of software. There was no acquisition of the software. The ownership remained with the vendor only. Hence, the expense was of revenue nature and allowed as deduction. Telephone and internet expenses allowable as deduction . (AY. 2015-16)

Bigfoot Retail Solution Pvt. Ltd v. ACIT (2022)97 ITR 73 (SN)(Delhi)(Trib)

S.37(1): Business expenditure – Foreign Travel expense- Expenses or payments not deductible – Excessive or unreasonable – Motor Car Expenditure to director - Restriction of disallowance to 10% is held to be justified.[S. 40A(2)]

The Tribunal held that there was no infirmity in the order passed by the Commissioner (Appeals) restricting the disallowance to 10 per cent. of the foreign travel expenses incurred and Motor Car Expenditure to directors. (AY. 2010-11, 2011-12).
Dy. CIT v. S. Kumars Nationwide Ltd. (2022) 97 ITR 60 (SN) (Mum) (Trib)

S.37(1): Business expenditure - Mercantile system of accounting – leas rent paid pertaining to earlier year - Crystallised during financial year – Allowable as deduction .[S. 145]
Held that as liability towards rent though pertaining to earlier period had crystallised during financial year 2009-10 and assessee paid and accounted for these expenses in account books in said year and also deducted and deposited TDS in said year, lease rent was allowable as business expenditure in year under consideration . (AY.2010 -11)
Kamla Retail Ltd. v. Addl. CIT(2022) 212 DTR 94 / 216 TTJ 483 / 140 taxmann.com 343 (Chd)(Trib)

S.37(1): Business expenditure –Travelling expenses – Ad -hoc disallowance is not justified .
Held that the details of expenditure incurred on air journeys showed that all the journeys were related to the business of the assessee. The disallowance on ad hoc basis was deleted . (AY. 2003 -04 ,2006 -07 to 2008 -09)

Jindal Steel and Power Ltd. v. Add. CIT (2022)97 ITR 516 (Delhi) (Trib)

S.37(1): Business expenditure – Additional levy of coal pursuant to Supreme court direction- Allowable as deduction. [S. 145]
Held, that the additional coal levy relating to the assessment year was allowable as business deduction and it was not the case of the assessee that deduction thereof should be allowed in two different assessment years. (AY. 2003 -04 ,2006 -07 to 2008 -09)

Jindal Steel and Power Ltd. v. Add. CIT (2022)97 ITR 516 (Delhi) (Trib)

S.37(1): Business expenditure- Employee's stock option plan- Option to purchase shares after completion of vesting period at a lesser price than the market value- Ascertainable liability- Allowable as deduction [S. 145]
Held, that the expense was an ascertainable liability since the employees incurred the obligation over the distinct period, notwithstanding the fact that the exact amount was quantified at the time of exercising the options. Thus, the employees' stock option plan expenses were to be allowed. (AY. 2003 -04 ,2006 -07 to 2008 -09)

Jindal Steel and Power Ltd. v. Add. CIT (2022)97 ITR 516 (Delhi) (Trib)

S.37(1): Business expenditure- Construction of hospital and school auditorium for benefits of employees- expense made wholly for the purpose of business- Allowable as deduction
The Tribunal held that the expenses on construction of hospital and school auditorium for benefits of employees as well as part of corporate social responsibility. Allowable as deduction . (AY. 2003 -04 ,2006 -07 to 2008 -09)

Jindal Steel and Power Ltd. v. Add. CIT (2022)97 ITR 516 (Delhi) (Trib)

S.37(1): Business expenditure – Aircraft Lease Rental- Lessor eligible to claim depreciation- Lessee eligible to claim deduction on rental payments of the aircrafts- Accounting standard created distinction between finance lease and operating lease- Not applicable- Allowed in earlier years-Principle of consistency followed .[S. 32, 145]
Held, that Circular No. 2 of 2001, dated February 9, 2001 ([2001 247 ITR (St.) 53) clarified that the Accounting Standard creating a distinction between finance lease and operating lease would have no implications on the allowance of depreciation on assets under the provisions of the Act. There being no change either in the facts or in law in this regard, the position accepted by the Department had to be followed and the lease rent allowed on the principle of consistency. (AY. 2003 -04 ,2006 -07 to 2008 -09)

Jindal Steel and Power Ltd. v. Add. CIT (2022)97 ITR 516 (Delhi) (Trib)

S.37(1): Business expenditure- Redeemable gift vouchers- No evidence doubting genuineness of the expenditure- Disallowance is not justified.

The Tribunal held that there was no evidence doubting the genuineness of the expenditure. Thus, there was no infirmity with the order of CIT (A).(AY. 2009 -10, 2011 - 12)
ACIT v. Rohit and Co. (2022)97 ITR 223 (Kol)(Trib)

S.37(1): Business expenditure –Foreign travel- Disallowance of Rs . 2.5 lakh confirmed .
The Tribunal held that once the Assessing Officer has admitted the fact that expenditure has incurred for foreign travel, no ad hoc disallowance can be made for failure file evidence to justify the expenses. Considering the facts of the case the disallowance of Rs . 2.50 lakh is confirmed . (AY.2013-14)
M. V. A. Seetharama Raju v Dy. CIT (2022) 97 ITR 714 (Chennai) (Trib)

S.37(1): Business expenditure – Expenditure on sponsoring sports – Allowable as revenue expenditure.

Held that expenditure on sponsoring sports is allowable as revenue expenditure. Followed earlier year order . (AY. 2013 -14)

United Spirits Ltd v . Dy CIT (2022) 97 ITR 272 (Bang)(Trib)

S.37(1): Business expenditure – Education cess on secondary and higher education cess- Not allowable as deduction . [S. 40(a)(ii)]
The Tribunal held that the education cess including secondary and higher education cess was not allowable as deduction.(AY.2013-14)
United Spirits Ltd. v. Dy. CIT (2022)97 ITR 272 (Bang) (Trib)

S.37(1): Business expenditure – Commission expenditure – Mere inability to furnish the confirmation letters from the parties commission payment cannot be disallowed .

The appellant had filed the primary details such as name, address, invoice, payment made etc. However, the assessee could not furnish the confirmations from payees and for want of the confirmations, Assessing Officer made disallowance. The ld.CIT(A) following the decision of his order in assessee's own case in earlier years has deleted the addition. Tribunal held that from the material on record, it is clear that the respondent / assessee had discharged the onus cast upon it by filing the primary details. Mere inability to furnish the confirmation letters from the recipients cannot be the reason to disallow the commission expenditure without causing any further enquiries by the Assessing Officer as to the genuineness or otherwise of the expenditure. Order of CIT(A) is affirmed . (AY. 2010-11 , 2011 -12)

Dy.CIT v. Atlas Copco (India) Ltd (No .1) (2022) 96 ITR 520 (Pune)(Trib)
Dy. CIT v. Atlas Copco (India) Ltd (No .2) (2022) 96 ITR 566 (Pune)(Trib)
S.37(1): Business expenditure – Capital or revenue – Expenditure on rented premises – Not allowable as revenue expenditure [S. 32]

Held that the expenditure incurred on rented premises cannot be treated as revenue in view of the plain provisions of Explanation 1 to Sec.32 of the Act. The ld.CIT(A) is in total ignorance of the provisions of Explanation 1 of Sec.32 of the Act held it to be revenue in nature. The decision relied upon by the learned counsel has no application after insertion of Explanation 1 of Sec.32 of the Act. Accordingly the order of ld.CIT(A) reversed and order of the Assessing Officer is affirmed . (AY. 2010-11, 2011-12)

Dy.CIT v. Atlas Copco (India) Ltd (No .1) (2022) 96 ITR 520 (Pune)(Trib)
Dy. CIT v. Atlas Copco (India) Ltd (No .2) (2022) 96 ITR 566 (Pune)(Trib)

S.37(1): Business expenditure - Accrued or Contingent Liability — Provision for warranty - Ad-hoc basis— Not deductible..
The Tribunal held that the Commissioner (Appeals) had found that the assessee had made provision for a huge amount and had reversed such provision in the subsequent years without the utilization of the amount for providing warranty obligation. Hence it was clear that the provision made in the books of account for warranty obligation was not on the basis of systematic estimation of liability based on past experience and future obligation. Therefore, the provision made in the books of account for warranty obligation was an unascertained liability and contingent in nature. It could not be allowed as a deduction . (AY. 2011-12 to 2014-15)
BGR Energy Systems Ltd. v. ACIT (2022) 96 ITR 625 (Chennai) (Trib)
ACIT v. Sasikala Raghupathy (Smt.) (2022)96 ITR 625 (Chennai) (Trib)

S.37(1): Business expenditure -Interest on debentures or compulsorily convertible debentures — Added to work in progress-Builder - Excess interest is required to be added back proportionately to total income as and when corresponding amount of work-in-progress reversed on sale of Flats/Plots [S. 145]

The Tribunal held that since the assessee capitalised interest on debentures/compulsorily convertible debentures in its work-in-progress for the assessment 2013-14, when the work-in-progress was reversed in the subsequent years at the time of sale of flats/plots, the corresponding amount of excess interest on debentures/compulsorily convertible debentures, over and above its arm's length price, needed to be reversed and added back to the income of that year. Therefore, the amount of capitalised interest on debentures/compulsorily

convertible debentures to the work-in-progress for the AY 2013-14, as was in excess of its arm's length price freshly determined by the Assessing Officer/Transfer Pricing Officer, was to be disallowed proportionately in the years in which the work-in-progress containing the amount of such interest standing as on March 31, 2013, was reversed on the sale of flats/plots. (AY. 2015-16)
City Corporation Ltd. v. Dy. CIT (2022) 96 ITR 246 (Pune) (Trib)

S. 37(1): Business expenditure — Subscription paid to different committees and associations in local vicinity – Allowable as deduction – Excess amount paid as written off – Matter remanded.
The Tribunal held that the subscription had been paid to different committees and associations in the local vicinity where the assessee operated its business. These subscriptions were paid to the local clubs and committees for smooth functioning of the business. These expenses had not been incurred for the personal benefit of the directors or employees but were exclusively incurred for the purposes of business and were therefore allowable as deduction . Excess amount paid was written off . The matter remanded . (AY. 2014-15)
Welkin Telecom Infra (P.) Ltd. v. Dy. CIT (2022)96 ITR 475 (Kol) (Trib)

S.37(1): Business expenditure — Payment to Mosque for free lunch to Assessee's employees —Mosque not under control of assessee-Free Lunch not provided exclusively to Labourers of assessee — Not allowable as deduction .
The Tribunal held that it was evident from the letter of the mosque produced by the assessee that the free lunch was provided by the mosque to labourers and artisans in that area. The facility of the assessee happened to be in vicinity of the mosque so employees availed of free lunch provided irrespective of whether or not those were employed in the facility of the assessee. The assessee had not established that the payment of Rs. 1,00,000 to the mosque was a quid pro quo for the free lunch facility extended to the labourers of the assessee. The mosque was not under the control of the assessee and the free lunch was provided to the other persons and not exclusively to the labourers of the assessee. The payment made by the assessee could not be treated as wholly and exclusively for the purpose of the business of the assessee. The action of the Commissioner (Appeals) in affirming the disallowance was proper. (AY. 2012-13)
M. D. Noorudin Zariwala v. CIT(Appeals) (2022) 96 ITR 43 (SN) (Mum) (Trib)

S.37(1): Business expenditure — Travelling expenses — Personal use- Disallowance of 20 Per Cent. for personal use is held to be justified .

It was held that the assessee failed to substantiate that there was no personal use in travelling and petrol expenses by the assessee. Therefore, there was no error in the order of the Commissioner (Appeals) upholding the disallowance of 20 per cent. of the travelling expenses for personal use in terms of section 37(1) of the Act.(AY. 2012-13)
M. D. Noorudin Zariwala v .CIT(Appeals) (2022) 96 ITR 43 (SN) (Mum) (Trib)

S.37(1): Business expenditure - Ceremony expenses — Disallowance at 30 Per Cent is held to be justified .
It was held that in the assessee's own case for the AY. 2006-07, the Tribunal had confirmed the disallowance at 50 per cent. of ceremony expenses. The disallowance in this year being at a lower level vis-à-vis that sustained by the Tribunal in the earlier year, no interference was called for. (AY. 2014-15, 2015-16)

Sant Tukaram Sahakari Sakhar Karkhana Ltd. v. ITO (2022)96 ITR 72 (SN)(Pune)(Trib)

S. 37(1): Business expenditure -Diversion by overriding title —Matter remanded [S.40A(2)]

It was held that the matter was to be remanded to the Assessing Officer for decision afresh in consonance with the articulation of the law by the Supreme Court in CIT v. Tasgaon Taluka Sahakari Sakhar Karkhana Ltd (2019) 412 ITR 420 (SC) . The Assessing Officer would allow deduction for the price paid under clause 3 of the Sugar Cane (Control) Order, 1966 and then determine the component of distribution of profits embedded in the price paid under clause 5A, by considering the statement of accounts, balance-sheet and other relevant material supplied to the State Government for the purpose of deciding or fixing the final price or additional purchase price or State advised price under this clause. The amount relatable to the profit component or sharing or distribution of profits paid by the assessee, which would be appropriation of income, was not to be allowed as deduction, while the remaining amount, being a charge against the income, was to be considered as deductible expenditure. At this stage, the distribution of profits can only be in respect of the payments made to the members. In respect of payments to non-members the Assessing Officer was to consider the matter afresh applying the provisions of section 40A(2) of the Act, as had been held by the Supreme Court.(AY. 2014-15, 2015-16)

Sant Tukaram Sahakari Sakhar Karkhana Ltd. v. ITO (2022)96 ITR 72 (SN)(Pune)(Trib)

S.37(1): Business expenditure - Additional payment to avoid litigation – Deduction not claimed — Disallowance is not warranted.

The Tribunal held that an additional payment being made to the seller of land or any of his relative or any other party post registration of sale deed to avoid litigation and to take peaceful possession and the Assessing officer disallowing the same, held that the deduction in respect of additional payment having not been claimed, disallowance could not be made. (AY.2006-07, 2007-08)

Rainbow Promoters (P.) Ltd. v. ACIT (2022)95 ITR 232 (Delhi)(Trib)

S.37(1): Business expenditure - Prior period expenses -Payments were made when actual bills received after crystallisation of expenditure- Allowable as deduction . [S. 145]

The Tribunal held that the assessee had been following the practice of accounting consistently from year to year and there was no change in this practice in the concerned assessment year also. The assessee had been making the provision for payment of expenses at the end of each year which provision was paid in the next assessment year. Sometimes there was short provision made by the assessee and in view of short provision, when actual bills were received after crystallisation of expenditure, the assessee made the payment. This method was consistently followed by the assessee. Therefore, there was no infirmity in the method of accounting followed by the assessee and it could not be disallowed. (AY.2003-04)

VRL Logistics Ltd. v. ACIT (2022)95 ITR 221 (Bang)(Trib)

S.37(1): Business expenditure - Short fall in inventory written off – Allowable as deduction – Purchase of tools allowable as revenue expenditure -Provision for warranty – Allowable as deduction - Lability for erection and commissioning placed upon shoulders of assessee — Provision at rate of one per cent. to three per cent. determined on basis of past experience – Matter remanded to the Assessing Officer . [S. 28(1)]

Held that short fall in inventory written off is allowable as deduction . Purchase of tools allowable as revenue expenditure .Provision for warranty is allowable as deduction . As regards liability for erection and commissioning placed upon shoulders of assessee . The provision at rate of one per cent. to three per cent. determined on basis of past experience . Matter remanded to the Assessing Officer . (AY. 2010 -11 to 2014 -15)

Bharat Fritz Wermer Ltd v. Dy .CIT (2022) 95 ITR 507 (Bang) (Trib)

S. 37(1): Business expenditure — Capital or revenue — Product development expenses —Allowable as revenue expenditure - Provision for customer claims — Matter restored to Assessing Officer to examine claim in accordance with principles laid down by Supreme Court- Provision for bad and doubtful debts- — Matter restored to Assessing Officer .

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In the matter the Dispute Resolution Panel directed the Assessing Officer to examine the expenditure and if it was found that the provision was made on a consistent and scientific basis, the assessee manufactured multiple products and non-utilised portions of earlier years are either written back or reduced from the new provisions, the expenditure should be allowed under section 37(1). The Tribunal held that the issue with regard to disallowance of working capital adjustment was restored to the file of the Assessing Officer/Transfer Pricing Officer with the direction to allow working capital adjustment on actual basis. The Tribunal held, that the Assessing Officer did not follow the directions given by the Dispute Resolution Panel. Therefore, the issue was restored to the file of the Assessing Officer with the direction to examine the claim of the assessee in accordance with the principles laid down by the Supreme Court in the case of Rotork Controls India .Provision for bad and doubtful debts the matter restored to Assessing Officer . (AY.2009-10)

SKF Engineering and Lubrication India Pvt. Ltd. v. Dy. CIT (2022)95 ITR 24 (Bang)(Trib)

S.37(1): Business expenditure - Commission- Documents produced - Direct nexus between commission paid and income generated – Even in the absence of any agreement with the commission agent, simply introducing or referring potential customers **the commission payment is allowable as deduction .**

Dismissing the appeal of the Revenue the Tribunal held thateven in the absence of any agreement with the commission agent, simply introducing or referring potential customers to the assessee falls within the ambit of "services rendered" by the commissioning agent so as to make the claim of commission payment eligible for deduction . (AY. 20016 -17)

Dy.CIT v. Ganges International P. L td (2022) 95 ITR 161 (Chennai)(Trib)

S.37(1): Business expenditure – Commission payment –Consultancy charges - TDS was deducted – Payment by account cheque – Failure to provide the nature of service rendered – Disallowance of payment was affirmed .

Held that the commission was paid through banking channel and after deducting the TDS. What has been doubted by the authorities below is that the assessee failed to provide details of the nature of services rendered by the commission agent. The onus lies upon the assessee to justify based on the documentary evidence that the expenses have been incurred wholly and inclusively for the purpose of the business. On the facts of the case the assessee has not justified the services rendered by the commission agent. Accordingly the disallowance was affirmed . (AY. 2009 – 2010)

Akik Tiles Pvt Ltd. v . JCIT (2022) 95 ITR 77 (SN)(Ahd)(Trib)

S.37(1): Business expenditure - Coal handling charges- Matter remanded – Delay of 1234 days in filing the appeal was condoned [S. 40(a)(ia) 254(1)]

The assessee company engaged in the business of coal transportation . Coal handling charges paid to three Tipper Owners through banking channel . The assessee company provided the name, addresses, PAN as also nature and basis of payment of 'coal handling charges' paid to three payees .The payees have being not filed their returns of income, the assessee Company requested the AO to make reporting to the AOs holding jurisdiction over the payee's concerned and to make satisfactory inquiry and/or verification of evidences . However, the AO made disallowance on the ground of nonproduction of the demonstrable and irreputable evidence . The CIT (Appeals) passed the *ex parte* order on the ground of nonparticipation of the appellant in the appeal proceedings and confirmed the disallowance made by the AO. On appeal the Tribunal held that the disallowance primarily on the premises of insufficient evidences, that there is no point of violation of provisions of Section 40(a)(ia) . To make avail the sufficient, and adequate opportunity to the assessee, the matter is restored back to the file of the learned AO . (AY. 2012 -13)

Srimaan Industries Pvt. Ltd. v. ITO (2022) 213 DTR 105 / 217 TTJ 120 (Hyd.)(Trib)

S.37(1): Business expenditure - Commission – Consignment agents – Governrment deoartments – Allowable as deduction . [S. 147 , 148]

Assessee was engaged in business of supply of patented medicines to medical department of various Government departments . Assessee appointed various consignment agents and commission paid to these agents was claimed as expenditure. Assessing Officer reopened assessment on ground that no agent was required to obtain contracts or to make supplies to Government departments and expenses incurred by assessee were to be disallowed as same were not genuine . Commissioner (Appeals) deleted disallowance on ground that commission was paid to agents to render service associated with supply and not for procuring supply-order from Government departments . Tribunal held that the assessee submitted complete details of agents to whom commission was paid along with supporting vouchers .Since assessee appointed commission agents for various services associated with supply of medicines and assessee submitted details of various tasks done by them, disallowance of commission expenses was rightly deleted by Commissioner (Appeals) . (AY 2009-10 , 2010-11)

Dy. CIT v. Alpha Laborities (P) Ltd. (2022) 217 TTJ 1(UO) / 140 taxmann.com 16 (Indore)(Trib)

S.37(1): Business expenditure-Travelling expenses-1/5 of disallowance is held to be justified.

Held that disallowance of 1/5 of the Travelling expenses is held to be justified. (AY. 2011-12)

Vardhman Shipping (P.) Ltd. v. ACIT (2022) 197 ITD 250/ 98 ITR 3 (SN) (Ahd) (Trib.)

S.37(1): Business expenditure-Capital or revenue-Hotelier-Repairs-renovation and redecoration of rooms-Revenue expenditure.

Held that expenditure incurred by a hotelier, in renovation and redecoration of rooms in hotel would be revenue expenditure. (AY. 2008-09)
Sankamtal Hotel (P.) Ltd. v. ACIT (2022) 197 ITD 292 (Panaji) (Trib.)

S.37(1): Business expenditure-Corporate social responsibility (CSR)-Set off against liability towards CSR of current year-Matter remanded to Assessing Officer for verification [Companies Act, S. 135]

During the year, assessee claimed corporate social responsibility (CSR) expenditure of certain amount incurred by it. Assessing Officer held that as per Explanation 2 to section 37(1) as amended by Finance Act, 2014, any expenditure incurred by an assessee on activities relating to CSR as referred to in section 135 of Companies Act would not be deemed to be an expenditure incurred for purpose of business or profession is not allowable. Assessee contended that amount spent by it towards CSR during previous year was over and above its statutory liability under section 135 of Companies Act which could be set off against liability towards CSR of current year and, further, assessee was not required to incur any CSR expenditure. Held that the assessee had not demonstrated as to how it was exempted from incurring such expenditure on CSR as required under section 135 of Companies Act,there was nothing on record to show that assessee had incurred more than required expenditure on CSR in earlier years which could be set-off against liability on CSR of current year. Matter remanded back to Assessing Officer for verification. (AY. 2017-18)
JSW Cement Ltd. v. ACIT. (2022) 197 ITD 380/ 220 TTJ 48/ 217 DTR 385 (Mum) (Trib.)

S.37(1): Business expenditure-Setting up of business-Setting up studio on commercial property-Leave and License Agreement with India bulls Properties Pvt. Ltd. on 5-6-2009-Disallowance of expenditure is affirmed.

Held the assessee had entered into a Leave and License Agreement with Indiabulls Properties Pvt. Ltd. on 5-6-2009 and had merely carried out fit out work. As the assessee was not in a position to solicit customers till end of May, 2009 before start of Leave and License Agreement,disallowance made by Assessing Officer which had been confirmed by Commissioner (Appeals) is affirmed. (AY. 2009-10)
NDTV Studios Ltd. v. ITO (2022) 197 ITD 388 (Delhi) (Trib.)

S.37(1): Business expenditure-Sales promotion expenses-Self made vouchers-Payments made to Tamil Nadu State Marketing Corporation (TASMAC) is not allowable since it was a public sector undertaking of State of Tamil Nadu-Not allowable as deduction. [S. 40A(3)]
Held that the assessee was not able to identify payees of such payments and these payments were evidenced merely by self-made vouchers without there being any supporting third party vouchers disallowance is justified. Payments made to Tamil Nadu State Marketing Corporation (TASMAC) employees would not be allowable since it was a public sector undertaking of State of Tamil Nadu not allowable as deduction. (AY. 2007-8, 2013-14)

Mohan Breweries & Distilleries Ltd. v. ACIT (2022) 197 ITD 466 (Chennai) (Trib.)

S.37(1): Business expenditure-Amount paid to Life Insurance Corporation of India by a company-Group gratuity scheme-Not approved by Commissioner-Allowable as deduction.

Held that amount paid to Life Insurance Corporation of India by a company towards group gratuity scheme was an allowable expenditure under section 37(1) even if fund was not approved by Commissioner. (AY. 2006-07)

Kwality Zippers (P.) Ltd. v. DCIT (2022) 197 ITD 762 (Luck) (Trib.)

S.37(1): Business expenditure-Contribution to Temple, Panchayat-Allowable as business expenditure [S. 80G]

Held that contributions/expenditure which were neither in nature of personal expenditure or capital expenditure and had been incurred by assessee company in order to facilitate running of business of assessee of mining smoothly, being in nature of an expenditure incurred by assessee wholly and exclusively for purpose of its business, hence allowable as a deduction. (AY. 2009-10)

Infrastructure Logistics (P.) Ltd. v. JCIT (2022) 196 ITD 153 (Panaji) (Trib.)

S.37(1): Business expenditure-Club expenses-Deduction could not be disallowed on mere disclosure of these expenditure in clause 21(a) of tax audit report-Matter remanded.

Assessing Officer disallowed deduction claimed on mere disclosure of these expenditure in clause 21(a) of tax audit report. Held that assessee claimed that these expenditures were incurred wholly and exclusively for the purpose of its business, same was to be verified before deciding allowability of same under section 37(1) of the Act. Matter remanded for verification. (AY. 2018-19)

Legacy Global Projects (P.) Ltd. v. ADIT (2022) 197 ITD 655/ 100 ITR 9 (SN) (Bang) (Trib.)

S.37(1): Business expenditure-Fees-ROC-Capital or revenue-Debt restructuring-Increase in authorised capital and annual remuneration paid to monitoring institution under CDR-Allowable as revenue expenditure.

Held that increase in authorized capital was necessitated due to CDR. Under said CDR there was no fresh inflow of funds but only existing debts were restructured whereby OCCRPS were issued. There was no acquisition of any kind of enduring advantage. Allowable as revenue expenditure (AY. 2012-13)

Spandana Sphoorty Financial Ltd. v. DCIT (2022) 196 ITD 217/ 217 TTJ 837 / 214 DTR 121 (Hyd) (Trib.)

S.37(1): Business expenditure-Pre-operative expenses-Capital or revenue-Business of hotels, motels, catering etc.-Setting up business-Salaries and allowances to experts-Allowable as business expenditure.

Assessee-company, engaged in business of hotels, motels and catering, had purchased a semi-constructed building and land. It entered into a hotel operating agreement with IHCL for operating hotels on said land and incurred certain amount of expenses which were claimed same as deduction under section 37(1) of the Act Assessing Officer disallowed the claim on the ground that during year assessee had neither commenced its business operations nor had

earned revenue from operations, thus, such expenses claimed being pre-operative in nature were to be capitalized. Held that the assessee had obtained long term borrowings and acquired tangible and intangible assets and had paid mobilization advances to various vendors. Assessee had also deputed staff and paid salaries. Business could be said to have been set-up from date when one of categories of business activity was started and it is not necessary that all categories of business activities must start either simultaneously or that last stage must start before it could be said that business was set-up. Since assessee had acquired necessary infrastructure for its business and had started paying salaries and allowances of experts, assessee had achieved process of establishing business and, thus, business expenditure claimed during relevant years was to be allowed as deduction. (AY. 2012-13, 2013-14)

RBL Hotels (P.) Ltd. v. ACIT (2022) 196 ITD 513/ (2023) 222 TTJ 706/ 220 DTR 233 (Chennai) (Trib.)

S.37(1): Business expenditure-Loss on account of exchange difference-Allowable as deduction.[S. 28(i)]

Held that loss suffered on account of exchange difference as on date of balance sheet is an item of allowable expenditure. (AY. 2010-11)

Everest Industries Ltd. v. DCIT (2022) 196 ITD 563 (Mum) (Trib.)

S.37(1): Business expenditure-Setting up of business-Business expenditure claimed towards employees cost, depreciation etc. allowable as a deduction

The assessing Officer disallowed expenditures on the ground that the assessee's bio-mass power plant was synchronized to the grid only from 4-7-2011 and, since the assessee would not be ready to produce power till 4-7-2011, business would not be set up. Hence disallowed the expenditure. On appeal, the Assessee contended that its business was already set up but commencement did not take place due to the long gestation period. It had already acquired land to carry out business activities and the nature of major expenses incurred by the assessee was towards employee's cost, misc. cost and depreciation which showed that assessee had hired staff to carry out its business activities. Assessee had obtained various approvals/permissions in hand, deployed technical personnel, placed purchase orders and also signed long-term power purchase agreements with clients, which were all integrated into the process of commencing business. Tribunal held that since the assessee had achieved the process of establishing business by acquiring necessary infrastructure and paying salaries and allowances to experts and had furnished documentary evidence showing that its business had already been set up in the relevant assessment year, business expenditure claimed was allowed as a deduction (AY. 2009-10, 2010-11)

Orient Green Power Co. Ltd. v. ACIT (2022) 195 ITD 49 (Chennai) (Trib.)

S.37(1): Business expenditure-Foreign exchange difference-As on the date of the balance sheet-Allowable as a deduction-Provision for the stock-Ad-hoc basis-Contingent-Not allowable as a deduction-System of accounting-Followed continuously-Presumed to be correct [S. 145]

Held loss suffered by the assessee on account of foreign exchange difference as of the date of the balance sheet is allowable as a deduction. Provision for stock on an ad hoc basis is contingent in nature, not allowable as a deduction. Accounting method followed

continuously for a given period of time needs to be presumed to be correct till AO comes to conclusion for reasons to be given that said system does not reflect true and correct profits (AY. 2010-11, 2012-13, 2014-15)
Venture Lighting India Ltd. v. ACIT(2022) 195 ITD 109 / (2023) 102 ITR 354 (Chennai) (Trib.)

S.37(1): Business expenditure-Interest paid on delayed payment of TDS-Compensatory in nature-Allowable as deduction.[S. 201(IA)]

Held that interest charged on failure to remit the TDS within due date to the government would be compensatory in nature and interest paid on delayed payment of TDS under section 201(1A) is allowable as deduction (AY. 2015-16)
Resolve Salvage & Fire India (P.) Ltd. v. DCIT (2022) 195 ITD 266 (Mum) (Trib.)

S.37(1): Business expenditure-Subscription of lease line on one-time payment for three years-Allowable as revenue expenditure.
Held that expenditure incurred in nature of subscription of lease line on one-time payment for three years was revenue. (AY. 2010-11)
Goa Tourism Development Corporation Ltd. v. ACIT (2022) 195 ITD 406 (Panaji) (Trib.)

S.37(1): Business expenditure-Referral fees to doctors-Violation of regulation 6.8.1(d) of Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002-Not allowable as a deduction.

Held that referral fees paid to doctors who referred potential customers for availing stem cell banking services of assessee-company, acceptance of such referral fee by a medical practitioner was in clear violation of regulation 6.8.1(d) of Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002 and thus assessee-company was not eligible as a deduction. (AY.2015-16)
Stemade Biotech (P.) Ltd. v. DCIT (2022) 195 ITD 346/ 217 TTJ 960 (Mum) (Trib.)

S.37(1): Business expenditure-Capital or revenue-The cost of land acquisition and electrification charges -Allowable as revenue expenditure.

Assessee which is engaged in the construction of dams, etc. for Central and State Government departments that have executed Border Out Post works for the Ministry of Home Affairs and made certain payments to various States towards the cost of land acquisition and electrification charges. Held that since expenditure incurred towards land acquisition compensation was part and parcel of the contract agreement and same was included in project cost, impugned expenditure could not be treated of capital nature.(AY. 2013-14)
DCIT v. National Projects Construction Corporation Ltd. (2022) 195 ITD 596 (Delhi) (Trib.)

S.37(1): Business expenditure-Cash expenditure-Diesel, petrol oil and freight-Disallowance of one per cent of expenditure on ad-hoc basis-Disallowance was directed to be deleted.
Assessee engaged in the business of transporters incurred expenditure in cash towards diesel, petrol and oil and freight. The AO disallowed one per cent of expenses for want of

verification on an ad hoc basis. Held that expenditure incurred in cash in comparison to freight income was very minuscule and assessee is engaged in the business of transporters such expenses were unavoidable, Assessing Officer was directed to delete disallowance of expenses (AY. 2014-15)
Bhushan Logistics (P.) Ltd. v. ITO (2022) 195 ITD 756 (Mum) (Trib.)

S.37(1): Business expenditure-Carrying on of business-No business activities during the year-Matter remanded.
Held that there was nothing on record to suggest that such expenses were examined on basis of actual expenditure corroborated by evidence. Therefore, matter was remanded back to Assessing Officer to evaluate genuineness of expenses on actual expenditure basis and then pass fresh assessment order. (AY. 2014-15)
DCIT v. NCR Business Park (P.) Ltd. (2022) 196 ITD 678 (Delhi) (Trib.)

S.37(1): Business expenditure-Interest payment on late payment of tax at source under section 201(1A) is not eligible business expenditure for deduction and it is not compensatory in nature.[S. 201(IA)]

Interest payment on late payment of tax at source under section 201(1A) is not eligible business expenditure for deduction and it is not compensatory in nature. (AY. 2016-17)
TUV Rheinland NIFE Academy (P.) Ltd. v. ACIT (2022) 194 ITD 78 (Bang) (Trib.)

S.37(1): Business expenditure-Education cess including secondary and higher education cess-Not allowable as deduction.
Held that payment of education cess including secondary and higher education cess is not allowable as deduction under section. (AY. 2015-16)
Infinera India (P.) Ltd. v. JCIT (2022) 194 ITD 463 (Bang) (Trib.)

S.37(1): Business expenditure-Exhibition of tele-serials-expenditure incurred for production of tele-serials-Allowable as revenue expenditure.

Dismissing the appeal of the Revenue the Tribunal held that where assessee is involved in production and exhibition of tele-serials, expenditure incurred for production of tele-serials cannot be considered as capital in nature, because it does not give enduring benefit to assessee and does not lead to creation of any asset and said expenditure is definitely revenue in nature. (AY. 2009-10)

ACIT v. Radaan Media Works (I) Ltd. (2022) 194 ITD 505 (Chennai) (Trib.)

S.37(1): Business expenditure-Setting up of business-Business of providing information technology application management support services-

During the year the assessee-company had taken premises on rent, employed few employees, purchased certain assets and directors of company had stated in Directors' report that nature of work required to be performed under agreement entered with its AE would require 25 employees. Assessee claimed the expenditure as revenue expenditure. Assessing Officer held that assessee was not set-up and, hence, expenditure incurred prior to setting up of business was not deductible. Tribunal held that the expenditure incurred by the assessee after setting up of business but before actual commencement of operations, it could be said that assessee had set up its business during year under consideration and, accordingly, expense incurred by assessee was allowable as deduction. (AY. 2015-16

E-Land Systems (P.) Ltd. v. ITO (2022) 194 ITD 541 (Bang) (Trib)

S.37(1): Business expenditure-Carbon Emission reduction-Offered as income in earlier years-Entitle to claim as expenditure if ultimately receipts could not be realized.[S. 4]

Assessee credited CDM (Clean Development Mechanism) to revenue account and debited CDM revenue receivable account. However, subsequently CER (Carbon Emission Reduction) market crashed and as a result, assessee did not make efforts to get CERs certified. Income booked during assessment year 2010-11 was reversed during year which was claimed in computation of income. The Assessing Officer disallowed the claim. Commissioner (Appeals) held that amount receivable on account of CERs was capital in nature and therefore subsequent write back could not result in an allowable deduction. On appeal the Tribunal held the assessee's action of offering income to tax, would entitle him to claim expenditure if ultimately receipts could not be realized by assessee which is based on principal of equity and natural justice; therefore, on given facts and circumstances, claim made by assessee was an allowable deduction and Assessing Officer was to be directed to grant deduction as claimed by assessee. (AY. 2013-14)

Bharath Wind Farm Ltd. v. DCIT *(*2022) 194 ITD 636 (Chennai) (Trib.)

S.37(1): Business expenditure-Expenditure under (CSR)-Capital or revenue-Allowable as business expenditure.

Held that the assessee had not incurred said expenditure under any statute but under a CSR policy as per MoU signed with its nodal Ministry and said expenditure was for direct benefit not only of employees and workers but also for business activities, expenditure was allowable as business expenditure. (AY. 2011-12)

Security Printing & Minting Corporation of India Ltd. v. ACIT (2022) 194 ITD 641 (Delhi) (Trib.)

S.37(1): Business expenditure-Legal fees-Defending lawsuit filed against it for infringement of patent right-Allowable as revenue expenditure.

Dismissing the appeal of the Revenue the Tribunal held that the expenses incurred towards legal fees paid for defending lawsuit filed against it for infringement of patent rights and also paid an amount towards settlement of suit, impugned expenditure incurred by assessee were to be allowed as revenue expenditure. (AY. 2010-11, 2011-12)

DCIT v. Omni Active Health Technologies Ltd. (2022) 194 ITD 783 (Mum) (Trib.)

S. 37(1): Business expenditure –Rejection of books of account-Ad hoc disallowance on suspicion and conjectures, without rejecting the books of account not justified. [S. 145]

AO without rejecting the books, disallowed various expenses on percentage basis, on ground that personal element in such expenses cannot be ruled out. On appeal, the Tribunal held that, such disallowance is arbitrary in nature, and not sustainable. Disallowance can be made only if, expenses have no nexus to the business, or if any deficiencies is found in the vouchers, or there is no bill supporting the incurrence of an expenditure. (AY.2015-16)

ACIT.v. Mangaldeep (2022) 216 TTJ 102/211 DTR 7 (Surat)(Trib.)

S. 37(1): Business expenditure-Business loss-Capital or revenue-Acquiring company-Investment in subsidiaries-Write off expenditure-Acquiring business-Allowable as revenue expenditure [S. 28(i)]

On failure to acquire a Singapore-based entity through its wholly-owned subsidiary, the assessee wrote off loss towards expenditure incurred to acquire the company. The assessee would have benefitted from the acquisitions, as there was a possibility of increased business and better trading results. Thereby, the assessee would run the business more smoothly and profitably. The Tribunal noted that the investment was made to increase the business, and the investment was not to acquire manufacturing or infrastructural capacity but to boost assessee's sales. Hence, the loss suffered by the assessee is rightly written off. (AY. 2011-12, 2013-14)

Refex Industries Ltd. v. Dy.CIT (2022) 216 TTJ 633 / 212 DTR 178 (Chennai)(Trib)

S. 37(1): Business expenditure-Prior Period expenses-Tax deducted in the financial year-Settlement on the rent in the year under consideration-Allowable. [S. 145]

The assessee requested the landlord and the brand owners remission in rent due to the store's poor performance. Pending negotiation with the landlord and the brand owners, the lease rent was not paid earlier, and the final settlement was reached during the impugned assessment

year. Accordingly, the lease rent agreement was modified, and the revised licence fee has been mutually agreed upon and countersigned by both parties. During the assessment proceedings, the AO disallowed the amount as the expenditure belonged to the earlier year. The Tribunal held that what is relevant to determine is the crystallization of liability (when the amount has become due and payable). The AO has not questioned the commercial expediency and the nature of the business expenditure. The tax rates and deductions are the same for the prior and current year, creating a tax-neutral situation. It is clear from the facts that the payments were not made in the earlier year pending negotiations, and the payment was only made on the final settlement. Further, these expenses were booked in the accounts in the financial year and taxes are deducted and deposited in the financial year and not in the earlier assessment year. Therefore, liability crystallized during the year, and the same should be allowed in the hands of the assessee. (AY. 2010-11)

Kamla Retail Ltd. v. Add.CIT (2022) 216 TTJ 483 (Chd) (Trib.)

S. 37(1): Business expenditure-Provisions made towards 'periodic overlay expenses'-Not Contingent liability-If the same can be determined with some reasonableness-Allowable as deduction [S. 80IA (4) (i), 145]

The assessee had made provision of 'periodic overlay expenses' towards the pavement of the toll road. As per its arrangement with NHDP, the assessee had to relay the surface every five years. Hence, the assessee claimed the expenses as an ascertained liability and not a contingent liability. The Assessing officer disallowed the provision while determining the income under the regular provisions, holding that the basis of estimation of such cost of overlay expenses is not scientific and is thus contingent liability. The Tribunal held that contingent liabilities are liabilities that may be incurred by an entity depending on the outcome of an uncertain future event, such as a pending lawsuit. These liabilities are not recorded in the company's accounts and are shown below the line in the balance sheet as a footnote. In the instant case, a provision has been made to cover expenses that will have to be incurred in future. If the amount towards the expenditure can be reasonable, as done by the assessee by submitting reports from a third party, it could not be claimed that the expenses cannot be ascertained. Therefore, we find that there is no dispute that such provision towards the cost of overlay expenses is related to the business activity of operating and maintaining the highway. Any Addition made towards such provision would enhance the taxable profit, which is eligible for deduction u/s 80IA(4)(i) of the Act and would thus be a revenue-neutral exercise. The CBDT in Circular No 37 of 2016 has stated that the appeal and ground were so taken should not be pressed/withdrawn if the decision leads to a neutral tax issue. (AY. 2010-11)

GVK Jaipur Expressway (P) Ltd. v. Dy.CIT (2022) 216 TTJ 540 (Jaipur) (Trib.)

S.37(1)): Business expenditure-Supervisory fees-The AO cannot sit in the armchair of businessman and decide whether particular expenditure is required to be incurred for the business or not-Deduction is allowable in the year of payment of tax deduction at source.[S.40(a)(i)]

The Tribunal held thatthe AO cannot sit in the armchair of businessman and decide whether particular expenditure is required to be incurred or not. It is also an admitted legal position that the AO cannot question rational and necessity of incurring any particular expenditure.

What is required to be seen is whether particular expenditure is incurred wholly and exclusively for the purpose of business of the assessee and further such expenditure is supported by necessary evidence. In this case, the assessee has filed all possible evidence including agreement between parties to prove genuineness of expenditure incurred for supervisory services. Therefore, the AO erred in disallowing expenditure incurred by the assessee for payment made to its parent company for rendering supervisory services. The learned CIT(A), after considering relevant facts has rightly deleted additions made by the AO. Consequential to the said adjudication would be allowability of expenditure in the year of payment of TDS, which was rejected only due to conjecture by AO on deductibility of supervisory fees u/s 37. (AY. 2011-12,2013-14 2014-15, 2015-16)

ACIT v. Dong Woo Surface Tech India (P.) Ltd (2022) 94 ITR 547(Chennai) (Trib)

S.37(1): Business expenditure-Expenses incurred for the business cannot be disallowed by the AO on the question of commercial expediency.

Held that the assessee had maintained complete books of account and other subsidiary record and found all the expenses fully supported by vouchers. A bare reading of the order of lower authority revealed that in almost all the cases the disallowances have been made on ad hoc basis, simply on mere suspicion, surmises, and conjectures. An allegation remains a mere allegation unless proved. Suspicion can-not take the place of reality. It is a settled law that a businessman is the best judge to take care of its own interest & to take decisions and the AO is not supposed to intervene therein nor he can replace the assessee. Additions are thus unwarranted. (AY.2014-15)

ITO v. Bhagchand Jain(2022) 94 ITR 472/ 217 TTJ 202 (Jaipur)(Trib)

S. 37(1): Business expenditure-Capital or revenue-Pre-operative interest expenses-Pending for allocation-Not debited in profit and loss account-Disallowance is not valid.

Held that every year the interest relating to the hotel and the commercial project had been shown separately as expenditure pending allocation and such interest had not been found debited to the profit and loss account, since, in the remand report, the Assessing Officer had not furnished any explanation regarding his disallowance the Commissioner (Appeals) held the disallowance untenable. (AY. 2008-09)

Dy. CIT v. Balaji Hotels and Enterprises Ltd. (2022) 94 ITR 24 (Chennai)(Trib)

S.37(1): Business expenditure-Educational sponsorship of son of Director-Recipient of sponsorship undertaking to serve company after completion of studies and later joining service of assessee-Entitle to deduction.

Held that educational sponsorship of son of Director held to be allowable as business expenditure as the recipient of sponsorship undertaking to serve company after completion of studies and later joining service of assessee..(AY. 2015-16, 2017-18 to 2019-20)

Lumino Industries Ltd. v. ACIT (2022) 94 ITR 675/ 215 TTJ 62/ 213 DTR 290 (Kol)(Trib)

S.37(1): Business expenditure-Fabrication charges-Books of account not rejected-Disallowance of fabrication charges is not justified [S. 145]

Held that the Assessing Officer had not rejected the books of account of the assessee and no specific defects had been pointed out in maintenance of the books of account, that no addition had been made by the Assessing Officer for violation of any provisions relating to deduction of tax at source, that the expenses were essentially incurred on fabrication charges, consumption of indigenous consumable stores, import of components and spare parts and cleaning and forwarding and freight, that for earning income. Addition is held to be not valid. (AY. 2014-15)

Jaidka Woolen and Hosiery Mills P. Ltd. v. ITO (2022)94 ITR 57 (SN)(Delhi)(Trib)

S.37(1): Business expenditure-Telephone expenses –Club membership fee-Allowable as business expenditure-Entertainment Expenses-Expenses incurred on cigarettes and wines not allowable.

Telephone expenses,the club subscriptions are expenses incurred for business purposes as much as they facilitated interaction with business associations and were incurred with a view to promote soliciting the customers. Allowable as deduction. Expenses incurred by the assessee on purchase of cigarettes and wines not allowable as deduction.(AY. 2014-15)

Maharani of India v.ACIT (2022)94 ITR 8(SN) (Delhi)(Trib)

S.37(1): Business expenditure-Commission to increase sales-Free Lance Individuals-Allowable as business expenditure.

Held that commission to increase the sales is allowable as business expenditure.Followed earlier years orders of the Tribunal.*(*AY.2013-14)

Chhabra Triple Five Fashions Pvt. Ltd. v. Dy. CIT (2022)93 ITR 19 (SN) (Delhi) (Trib)

S.37(1): Business expenditure-Franchisee agreements for operating stores-Renovation and repairs of stores-Revenue expenditure-Education Cess and secondary and higher education cess-Allowable as deduction-Employees Stock Option Plan-Additional grounds admitted-Matter remanded.

Held that the process of setting up of new stores was a continuous process, that every year some new stores were set up, that the assessee could not carry on its business in a store which was different from a store of a DP outlet and the expenditure incurred allowable as revenue expenditure. Education Cess and secondary and higher education cess, allowable as deduction. Employees Stock Option Plan additional grounds admitted and matter remanded. (AY.2012-13, 2013-14)

Dy. CIT v. Jubilant Food works Ltd. (2022)93 ITR 1 (Delhi)(Trib)
Editorial : Affirmed in PCIT v. Jubilant Food works Ltd. (2022)447 ITR 29 (All)(HC)

S. 37(1): Business expenditure-Education Cess-Additional grounds admitted-Allowable as deduction. [S. 40(a)(ii), 254(1)]

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Held that the education cess was a mandatory expense to be paid but did not fall under capital and personal expenditure. Therefore, following the provisions of sections 40(a)(ii) and 115JB and CBDT Circular No. 91/58/66-ITJ(19), the assessee was entitled to the deduction as per the provisions of section 37 of the Act.(AY.2013-14, 2014-15)

ACIT v. PC Jewellers Ltd. (2022)93 ITR 244 (Delhi)(Trib)
Sas Research and Development (India) P. Ltd. v. Dy. CIT (No. 2) (2022)93 ITR 501 (Pune) (Trib)

S.37(1): Business expenditure-Increased liability on account of wage revision due to Court order-Entries in books of account not determinative-Right to claim legitimate deduction-Allowable as deduction. [S. 139(5), 145]

Held that entries in the books of account are not determinative of the assessee's right to claim a legitimate deduction. The liability of the assessee had crystallised and therefore the sum in question was allowable as deduction in computing the total income of the assessee. Tribunal also held that the Assessing Officer in the assessment order had considered the revised computation of loss of Rs. 10,47,17,495 and had not insisted on a revised return of income being filed. It was therefore not the case of the Assessing Officer that the claim was inadmissible owing to the assessee not having filed the revised return of income under section 139(5) of the Act. The Department was not entitled to raise an objection in this regard.(AY.2009-10)

ITO v. Karnataka State Industrial Co-Operative Bank Ltd. (2022)93 ITR 50 (SN) (Bang) (Trib)

S. 37(1): Business expenditure-Bogus purchases-Purchase of diamond though commission agent-Identity and genuineness is established-Deletion of addition is held to be proper.

Held, that the Commissioner (Appeals) had considered the quantitative details, stock and the payment made by the assessee with regard to the purchases, the retraction statement of the entry provider and deleted the addition. Therefore, the order of the Commissioner (Appeals) could not be interfered with..(AY.2013-14, 2014-15)

ACIT v. PC Jewellers Ltd. (2022)93 ITR 244 (Delhi)(Trib)

S.37(1): Business expenditure-Capital or revenue-Bad debts-Security deposits to landlord-Written off as revenue expenditure-Allowable as revenue expenditure. [S. 36(1)(vii)]

Held that the security deposit could not be considered as an enduring benefit to the assessee as the rent was being paid. For various reasons the assessee could not recover the deposits. Applying the principles of going concern concept, compared with the debtors, when the recovery was doubtful the claim was written off as bad debts in the profit and loss account, it could be allowed as a revenue expenditure in the relevant year. If the assessee was able to recover the money from the landlord in the future, it had to be offered as an income of the assessee. Allowable as revenue expenditure.(AY.2014-15)

Emkay Global Financial Services Ltd. v. Dy. CIT (2022)93 ITR 96 (Mum) (Trib)

S.37(1): Business expenditure-Taxes and rates-Interest on delayed payment of tax deducted at source-Not penalty-Compensatory in nature-cannot be treated as tax-Allowable as deduction-Repairs and maintenance-Ad-hoc disallowance is not justified. [S. 40(a)(ii)]

Held that the interest on delayed payment of tax deducted at source was not penalty but compensatory in nature and it could not be classified as part of the Income-tax liability of the assessee. Therefore, the expenses were allowable under section 37 of the Act.CIT v. Oriental Insurance Co.Ltd (2009) 315 ITR 102 (Karn)(HC) followed. Held that the Assessing Officer had not disputed the audited financials of the assessee-company but had proceeded to make an ad hoc disallowance at 10 per cent. of total expenses merely on the basis of surmises which was not sustainable in the eyes of law. The Commissioner (Appeals) had rightly deleted the disallowance treating it as the expenses incurred for the purpose of business.(AY.2012-13)

ITO v. MVL Credit Holdings And Leasing Ltd (2022) 93 ITR 533 (Delhi) (Trib)

S. 37(1): Business expenditure-Unrealised export sales and foreign exchange loss-Unbilled revenue brought into India lower than sum reduced by Assessing Officer-Allowable as deduction.

Held that the Assessing Officer was to consider the assessee's claim regarding unrealised export sales and foreign exchange loss since the actual figure representing unbilled revenue that was brought into India after a period of six months from the end of the relevant previous year was much lower, as could be seen from form 56F filed by the assessee, than the sum that was reduced by the Assessing Officer. *(*AY.2010-11)

Sandisk India Device Design Centre Pvt. Ltd. v. ITO (2022)93 ITR 569 (Bang) (Trib)

S. 37(1): Business expenditure-Interest-Failure to prove for the purpose of business-Disallowance is justified.

Held, that the onus was entirely on the assessee to establish on record that the interest expenditure claimed as deduction was incurred for the purpose of business. The assessee having failed to do so, the claim could not be allowed..(AY.2013-14)

Mll Logistics P. Ltd. v. ACIT (2022)93 ITR 513 (Mum) (Trib)

S.37(1): Business expenditure-ESOP Scheme-Discount on shares allotted by assessee to its employee under ESOP Scheme is revenue expenditure.
Held that Commissioner (Appeals) was justified in deleting addition on account of disallowance of ESOP expenses by holding notional discount on shares issued under ESOP scheme as revenue expenditure. (AY. 2014-15)
ACIT v. People Strong HR Services (P.) Ltd. (2022) 193 ITD 105 (Delhi) (Trib.)

S.37(1): Business expenditure-Construction of new roads-Capital expenditure-Share premium-Interest on borrowed capital-Matter remanded. [S. 36(1)(iii), 68]

Held, that the assessee had constructed the new roads in its business premises. Since, the construction of road has got enduring benefits, the cost incurred had to be capitalized. Issues relating to Share premium and interest on borrowed capital, Matter remanded (AY.2012-13)

Pragati Glass Pvt. Ltd. v. ACIT (2022)93 ITR 42 (SN) (Surat) (Trib)

S.37(1): Business expenditure-Agent of Life Insurance Corporation-Expenses related to salary, staff welfare and bonus-Disallowance on guess work is held to be not valid.
Held, that the Commissioner (Appeals) erred in sustaining the disallowance on the ground that the expenses so claimed were excessive and abnormal without adverting to the evidence filed in support of the claim. Even the Assessing Officer had made the disallowance without assigning any reason as to how the expenses claimed were excessive and unreasonable. The Department had not brought any adverse material on record except saying that the expenses were unreasonable. No disallowance was permissible under the law purely on the basis of guess work. Addition was deleted. (AY.2014-15, 2015-16)

Rajiv Gupta v. ITO (2022)93 ITR 3 (SN) (SMC) (Delhi) (Trib)

S.37(1): Business expenditure-Professional fees-Prior period expenditure-Expenses pertaining earlier year-Crystallized during the year-Allowable as deduction-Commission payable-Expenses pertaining to earlier year-Not allowable as deduction. [S. 145]

Heldthat expenses had arisen and crystallized in year under consideration when bills for same by concerned parties were raised on assessee, even though said expenses pertained to earlier year, assessee would be entitled to claim deduction for same in year under consideration when liability on account of said expenses had arisen and crystallized. Commission payment no evidence was brought on record hence not allowable as deduction. (AY. 2015-16)
Meena Circuits (P.) Ltd. v. ACIT(2022) 193 ITD 318 (Ahd) (Trib.)

S.37(1): Business expenditure-Real estate business-Expenses for certification work, management consultancy, fees for appearance before Tax Authorities and company secretarial work as professional fee-Allowable as deduction.

Held that professional fees paid for certification work, management consultancy, fees for appearance before Tax Authorities, company secretarial work are allowable as business expenditure.(AY. 2005-06)
Peninsula Land Ltd. v. DCIT (2022) 193 ITD 366 (Mum) (Trib.)

S.37(1): Business expenditure-Annual share listing fees paid to stock exchange-Allowable as revenue expenditure-Community development donation-Allowable as business expenditure.
Held that annual share listing fees paid to stock exchange is allowable as revenue expenditure. Expenditure incurred on community development which included donation for festivals, construction of market, cash paid for Puja, construction of water tanks and renovation of roads so as to maintain good relationship with villagers of nearby places where it was carrying on its drilling operation, said expenditure incurred by assessee was wholly and exclusively incurred for business purposes and was driven by business prudence, thus, same was to be allowed as business expenditure. (AY. 2011-12, 2012-13)
DCIT v. Great Eastern Energy Corporation Ltd. (2022) 193 ITD 404 (Delhi) (Trib.)

S.37(1): Business expenditure-Capital or revenue-Corporate Social Responsibility expense-Explanation 2 to section 37(1) inserted by Finance Act, 2014 with effect from 1-4-2015 is prospective in nature.
Held that Explanation 2 to section 37(1) inserted by Finance Act, 2014 with effect from 1-4-2015 is prospective in nature and; accordingly, prior to 1-4-2015, CSR expenses incurred by assessee were to be allowed as revenue in nature. (AY. 2013-14)
NTPC-SAIL Power Co. (P.) Ltd. v. DCIT (2022) 193 ITD 473 (Delhi) (Trib.)

S.37(1): Business expenditure-Capital or revenue-Royalty paid as percentage of sale in consideration of supply of Technical Know-how is allowable as revenue expenditure-Telephone and travelling expenditure-Self made vouchers-Disallowance of 10 % of expenditure is held to be not valid.
Held that royalty paid in case of running business and in terms of number of vehicles sold there was no increase in capacity and existing productivity, therefore, royalty paid to extent of 2.75 per cent of number of vehicle sold was a revenue expenditure. Disallowance of 10 % of expenditure is held to be not valid when there is no allegation of bogus expenditure. (AY. 2000-01, 2001-02)
Mercedes -Benz India (P.) Ltd. v. DCIT (2022) 193 ITD 624 (Pune) (Trib.)

S.37(1): Business expenditure-Provision for warranty-Replacement of batteries-Allowable as deduction-Sales promotion expenses-Expenditure for giving valuable gifts

to certain parties-Disallowance cannot be made on ad-hoc basis-Travelling expenses of partner for personal trip-Not allowable as business expenditure. [S. 145]

Held that provision consistently for replacement of batteries qua computers and in past, whatever provisions remained unutilized were offered as income by assessee, assessee would be entitled to claim deduction of provision for warranty for replacement of batteries in toto. Allowable as deduction. Held that expenditure for giving valuable gifts to certain parties and claimed it as sales promotion expenditure and had shown bills and vouchers for purchases and all details had been maintained scientifically, expenditure incurred by assessee could not have been disallowed on ad hoc basis. Held that travelling expenses of partner for personal trip is not allowable as business expenditure (AY. 2012-13, 2014-15)
ACIT v. Armee Infotech. (2022) 193 ITD 728 (Ahd) (Trib.)

S.37(1): Business expenditure-CSR expenses-Welfare of local community and thereby improving corporate image-Allowable as business expenditure-Expenditure incurred towards Pooja and purchase and distribution of sweets for Pooja was allowable as business expenditure.

Assessee-company had incurred CSR expenses towards payments for yagyashala, drinking water hut, purchase of PC for village Collectorate, donation for eye camp, donation/expenses for Gram Panchayat, payment to Gram Vikas Samiti, development and beautification of village pond and donation to a school for physically handicapped etc. Tribunal held that these CSR expenses were incurred for welfare of local community and thereby improving corporate image therefore such CSR expenses incurred by assessee was allowable as deduction. Tribunal also held that expenditure incurred towards Pooja and purchase and distribution of sweets for Pooja was allowable as business expenditure. (AY. 2011-12)
DCIT v. Godawari Power & Ispat Ltd. (2022) 193 ITD 869 (Raipur) (Trib.)

S.37(1): Business expenditure-Referral commission paid to doctors-Violation of the professional conduct-Not allowable as deduction. [Indian Medical Council (Professional Conduct Etiquette and Ethics) Regulations 2002, R. 6.8. 1(d)]

The assessee is a company engaged in the business of 'extraction, collection, preservation and banking of stem cells ' mainly from dental pulp. The assessee company has paid referral service fee to the Medical Practitioners for availing of the steam cell banking services. The Assessing Officer disallowed the said expenses, which was affirmed by the CIT(A).On appeal the Appellate Tribunal referred the rule 6. 8. 1(d)) of the Indian Medical Council (Professional Conduct Etiquette and Ethics) Regulations 2002 and held that the acceptance of such a referral fee by a medical Practitioner is forbidden by the legally enforceable code

of conduct which renders it an expenses for a purpose that is 'prohibited by law, depriving the assessee company to claim a tax deduction in respect of the said expenditure. Order of CIT(A) is affirmed. Referred Apex Laboratories P. Ltd v. Dy.CIT (2022) 442 ITR 1 (SC) (ITA No. 7823/Mum) 19 dt.20-5-2022 (AY. 2015-16)

Stemade Biotech P.Ltd v. Dy.CIT(2022) 195 ITD 346 (Mum) (Trib)

S.37(1): Business expenditure-Pre-Operative expenses-Real estate business-Do not form part of work in progress-Office expenses, salaries, advertising, travelling expenses which are incurred for running of business operations are to be treated as revenue expenditure and allowed as deduction

Tribunal held that there being difference between commencement of business and setting up of business, all expenses incurred pre-commencement are to be treated as pre-operative expenses and expenses incurred which do not form part of work-in-progress like office expenses, salaries, advertising, travelling expenses which are incurred for running of business operations are to be treated as revenue expenditure. (AY. 2013-14)

Logix Buildtech (P.) Ltd. v. ACIT (2022) 192 ITD 35 (Delhi) (Trib.)

S.37(1): Business expenditure-Freight inward expenses-Incurred in cash-Supported by self made vouchers-Disallowance is restricted to 7.5 %.

Tribunal held that since freight inward expenses claimed by assessee were incurred in cash and same were supported by only self-made vouchers, claim of assessee to that extent was not fully verifiable as rightly held by authorities, however, disallowance of 15 per cent made by Assessing Officer was excessive and unreasonable and keeping in view nature of business of assessee, it would be fair and reasonable to restrict it to 7.5 per cent. (AY. 2011-12

Motor Machinery Tools. v. ACIT *(*2022) 192 ITD 42 (SMC) (Kol) (Trib.)

S.37(1): Business expenditure-Sub-brokerage-Held to be allowable as deduction.

Sub-brokerage accounted for recipients was higher than amount of sub-brokerage accounted in its books of account. Disallowance is deleted. (AY. 2008-09)

Shivnarayan Nemani Shares & Stock Brokers (p) Ltd v. DCIT (2022) 192 ITD 50 (Mum) (Trib)

S. 37(1): Business expenditure-Real estate business –New project-Work in progress-Sales promotion and advertisement expenses-allowable as revenue expenditure. [AS. 2]

Assessee claimed deduction in respect of sale promotion expenses and advertisement expenses for launching its new project and attracting customers. Assessing Officer disallowed assessee's claim and capitalized same as part of work-in-progress cost of new project of assessee. CIT (A) allowed the expenses as revenue expenditure. On appeal the

Tribunal held that selling cost which included sale promotion expenses was not to be considered as a part of project cost. Tribunal also held that expenditure incurred on advertisement being necessary for promotion of business of assessee was to be allowed as business expenditure and would not form part of project cost. Followed Gopal Das Estates & Housing (P.) Ltd. v. CIT (2019) 412 ITR 429 (Delhi) (HC) Lodha Palazzo v. Asstt. CIT [IT Appeal No. 2298 (Mum.) of 2012, dated 10-12-2014]; and Macrotech Construction (P.) Ltd. v. Asstt. CIT (2019) 176 ITD 530 (Mum) (Trib), Vardhman Developers Ltd. v. ITO (2015) 55 taxmann.com 370/ 68 SOT 107 (URO) (Mum) (Trib).(AY. 2015-16)
DCIT v. Macrotech Developer Ltd. (2022) 192 ITD 438 (Mum) (Trib.)

S. 40(a)(i) : Amounts not deductible-Deduction at source-Non-resident –Professional and consultancy charges-Explanation 4 was not on the statute-Deletion of addition is justified [S. 9(1)(vi)), 195]

Held that the Tribunal is justified in deleting the professional and consultancy charges paid to a non-resident. The assessee was not liable to deduct tax at source. Explanation 4 was not on the statute when the payment was made. (AY. 2008-09)

PCIT v. EIH Ltd (2022) 329 CTR 95/ 218 DTR 389 (Cal)(HC)

S. 40(a)(i): Amounts not deductible - Deduction at source -Non-resident –Reimbursing salary of expatriates to foreign companies- not a fee for technical services- Disallowance not justified. [S. 9(1)(vii), 195]
Held, that the reimbursement made by the assessee towards the expatriate employees could not be regarded as fees for technical services , therefore was not taxable hence not liable to deduct tax at source . The Assessing Officer was directed to delete the disallowance made under section 40(a)(i) of the Act . (AY.2016-17).
Toyota Boshoku Automotive India Pvt. Ltd. v. ACIT (2022)98 ITR 363 (Bang) (Trib)

S. 40(a)(i) : Amounts not deductible - Deduction at source -Non-resident – Fees for technical services - Examination fees from students – Foreign Universities – Directly remitted to the Universities –Not to be treated as technical services - Not liable to deduct tax at source - DTAA -India -UK – Switzerland [S.9(1)(vi), 90, 195 , Art 13]
Dismissing the appeal of the Revenue the Tribunal held that the examination fees from students of the educational institutions which are imparting education as per the syllabus set by Foreign Universities and remitted the fees directly to Foreign Universities the assessee being only pass through entity , the assessee is not liable to deduct tax at source . The amount paid to Foreign Universities cannot be treated as fees for technical services .(AY. 2012 -13 to 2016 -17)
Dy.CIT v. Hyderabad Educational Institutions (P) Ltd (2022) 218 TTJ 487 (Hyd)(Trib)

S. 40(a)(i) : Amounts not deductible - Deduction at source -Non-resident – Managerial services charges paid to Non-Residents not Liable to tax at source – Disallowance is not justified – Expenditure on management services – Allowable as business expenditure [S. 195]

Held that managerial services charges paid to Non-Residents is not liable to tax at source , hence no disallowance can be made . Expenses incurred towards management services allowable as revenue expenditure(AY.2013-14)

Jt. CIT (OSD) v. Intertek India Pvt. Ltd. (2022)99 ITR 54 (SN) (Delhi) (Trib)

S. 40(a)(i) : Amounts not deductible - Deduction at source -Non-resident – Membership/subscription fees to its group company GTIL – Sharing of expenses – Reimbursement of expenses- Not liable to deduct tax at source – DTAA -India -UK [S. 9(1)(vi), 9(1)(vii) , 195 Art , 13(4)]

The Assessing Officer held that there was element of consultancy, technical and managerial services, and hence, membership fee paid by assessee would fall within category of Fees for Technical Services (FTS) and disallowed such amount under section 40(a)(i) for non-deduction of TDS . Commissioner (Appeals) held that amount paid by assessee was for user of brand and had to be treated as royalty and, hence, taxable in India . Tribunal held that the payments made by assessee to GTIL towards membership and subscription fee was not taxable as it was for reimbursement of eexpenses . The Tribunal also held that there was no material on record to demonstrate that payee had made available any technical knowledge, experience, skill, know-how or processes or had transferred technical plan or technical design for which payment was made and, thus, payment made could not be regarded as FTS under article 13(4) hence the assessee was not obliged to deduct tax at source under section 195 while remitting amount to GT UK LLP . (AY. 2011-12)

Grant Thornton Advisory (P) Ltd. v. Dy. CIT (2022) 216 DTR 119 / 218 TTJ 610/ 140 taxmann.com 348 (Delhi)(Trib)

S. 40(a)(i) : Amounts not deductible - Deduction at source -Non-resident – Royalty - Advertisements on various non-resident Websites - Earning commission- Neither constitute permanent establishment nor royalty - Not liable to deduct tax at source – DTAA – India – Ireland .[S.195, Art , 12]

Held that the view of the Commissioner (Appeals) that as the assessee had received a commission of 15 per cent. on the transaction, it had to deduct tax at source was totally baseless. The fact that only the commission income, which was the assessee's only entitlement in the transactions, was chargeable to tax in its hands, clearly proved that the payments made to F were only on behalf of the assessee's clients. Merely because the assessee reflected the commission in the profit and loss account on gross basis, it had invited the instant issue of deduction of tax at source. The entries in the books of account were not determinative of an assessee's taxable income. Addition was deleted . (AY.2015-16)

Interactive Avenues P. Ltd. v. Dy. CIT (2022)100 ITR 573 ((Mum)(Trib)

S. 40(a)(i) : Amounts not deductible - Deduction at source -Non-resident –Payment in foreign currency for expenses of global account management and leased-line charges — Not fees for technical service —VSAT charges not royalty -Not liable to deduct tax at source .

Held That in terms of Explanation 6 to section 9(1)(vi) the Commissioner (Appeals) had confirmed the addition on account of VSAT charges simply on the ground that the assessee had not furnished any explanation as to why the VSAT uplinking charges should not be treated as royalty. However, the Commissioner (Appeals) had, in the assessee's own case for the assessment years 2010-11 and 2012-13, deleted this addition on the ground that a unilateral amendment in the Act could not be read into a Double Taxation Avoidance Agreement. On the same lines, the addition made by the Assessing Officer and confirmed by the Commissioner (Appeals) was ordered to be deleted.).(AY.2006-07, 2007-08, 2008-09)

Expeditors International (India) Pvt. Ltd. v. Dy. CIT (2022)95 ITR 393 (Delhi) (Trib)

S. 40(a)(i) : Amounts not deductible - Deduction at source -Non-resident –Lease of Aircraft - Ownership of Aircraft with lessor – Not liable to deduct tax at source – Operating lease -Interest -DTAA- India – Ireland [S. 10(15A) ,195, Art , 8, 12]

Assessee assigning rights to purchase Aircraft in favour of lessors in Ireland who thereafter purchased Aircraft and gave them on operating lease to assessee . Ownership of Aircraft with lessor Supplementary rent mandatory payment for use of Aircrafts allowable as deduction . Supplementary rent exempt from tax in hands of lessors . Disallowance cannot be made for failure to deduct tax at source. Rentals received under agreements executed after 1-4-2007 not chargeable to tax in India as per Double Taxation Avoidance agreement between India and Ireland. Lease rent cannot be treated as interest. (AY.2012-13)
Interglobe Aviation Ltd. (Indigo) v. Add. CIT (2022)95 ITR 586 (Delhi) (Trib)

S. 40(a)(i) : Amounts not deductible-Deduction at source-Non-resident –Legal services-Matter remanded-DTAA-India-UK [S. 9(1)(i), 9(1)(vii)), 195, Art.7]

Assessee contended that it was evident from Form no. 15CB that remittance was made towards legal consultancy which did not involve technical services and, hence, payment was business profit covered under article 7 of DTAA between India and UK and, thus, no TDS was to be deducted on same.Matter remanded to Assessing Officer for afresh consideration. (AY. 2011-12)
Vardhman Shipping (P.) Ltd. v. (2022) 197 ITD 250 / 98 ITR 3(SN) (Ahd) (Trib.)

S. 40(a)(i) : Amounts not deductible-Deduction at source-Non-resident-Advertisement services-Payment to Irish company-No Permanent Establishment in India-Not liable to deduct tax at source-DTAA-India-Irish [S. 9(1)(i), 195,Art, 7]

The assessee paid consideration of certain amount towards advertisement services to an Irish company without deduction of tax at source. The AO disallowed payment under section 40(a)(i) of the Act. On appeal Commissioner (Appeals) held that Irish-company had certified that it did not have Permanent Establishment (PE) in India and it was resident of Ireland for taxation purposes, hence, there was no liability upon assessee to deduct TDS under section 195 on such payment made for advertisement services. On appeal order of CIT (A) is affirmed. (AY. 2012-13)

ACIT v. Lenskart Solution (P.) Ltd. (2022) 196 ITD 297 (Delhi) (Trib.)

S. 40(a)(i): Amounts not deductible-Deduction at source-Non-resident-Fes for technical services-Rendering flight testing services in India-Not in nature of fees for technical services-Not liable to deduct tax at sources-DTAA-India-France [S. (9)(1)(vii), 195, Art, 13]

Assessee, a public sector undertaking of Govt. of India, which is engaged in the business of design, development, manufacture and maintenance of advanced fighters, piston and jet engine trainers, associated aero engines, aircraft systems, equipment and avionics catering mainly to India's defence needs. Assessee had engaged a French company (CGTM) for conducting flight testing services in respect of engines against payment of a certain sum in India and assessee claimed payment for same as an expenditure and, did not deduct tax at source.-Assessing Officer made disallowance under section 40(a)(i) on the ground that said the payment was covered by 'FTS' as defined under section 9(1)(vii) and, hence, tax ought to have been deducted at source. Disallowance was affirmed by CIT(A)). On appeal, the Tribunal held that fees paid towards services were purely towards testing of engines and subsequent action of the assessee to carry out improvement based on test results given by CGTM could not be considered as a basis for 'make available' services rendered by CGTM to assessee. Accordingly, fees paid by the assessee to CGTM were not in nature of fees for technical services and, hence not liable to deduct tax at source. Disallowance was deleted. (AY. 2009-10)

Hindustan Aeronautics Ltd. v. ACIT (2022) 195 ITD 118 (Bang) (Trib.)

S. 40(a)(i) : Amounts not deductible-Deduction at source-Non-resident-Royalty-For use or right to use of overall ICT infrastructure-Liable to deduct tax at source-Disallowance is justified DTAA-India-Netherlands. [S. 9(1)(vi)(b), 195 Art, 12]

Held that since article 12 of DTAA specifically covered consideration for use of any industrial or commercial equipment, consideration paid by assessee for use or right to use of overall ICT infrastructure set up by its holding company would fall within term 'royalty' within meaning of section 9(1)(vi)(b) at hands of said holding company and assessee was liable to deduct TDS on same.Disallowance is justified. (AY. 2012-13)

Vanderlande Industries (P.) Ltd. v. ACIT (2022) 194 ITD 229/ 99 ITR 585 / 219 TTJ 493 / 216 DTR 289 (Pune) (Trib.)

S. 40(a)(i) : Amounts not deductible-Deduction at source-Non-resident-Shipping business-As per charging section 172, no liability arises for payment of tax by non-resident receiving payment on time charter basis. [S. 172, 195]

Assessee had paid ship hiring charges to non-resident company. Assessing Officer held that amount paid for hiring of ship on time charter basis was chargeable to tax as assessee had paid rent for sailing ship in Indian water, which is not international traffic and, thus, income to non-resident ship owner had accrued in India and, therefore, assessee was liable to deduct TDS and pay same to Government account as per provisions of section 195.Since assessee had not deducted TDS from said payment, Assessing Officer made disallowance under section 40(a)(i) of the Act. On appeal the Tribunal held that since Assessing Officer totally ignored NOCs issued by department allowing ship for sailing in Indian Port as payment was

on time charter basis, Assessing Officer was not justified in making said disallowance. (AY. 2005-06)
ITO v. Terapanth Foods Ltd. (2022) 194 ITD 614 (Rajkot) (Trib.)

S. 40(a)(i) : Amounts not deductible-Deduction at source-Non-resident-Repair and maintenance services-Reimbursement of expenses-No TDS is deductible-DTAA-India-Japan [S. 9(1)(vii), 19, Art, 12]

Held that the amount paid towards refurbishment/reconstruction is not in nature of fee for technical services covered under section 9(1)(vii) as refurbishment activity is in nature of reconstruction/repair and accordingly no TDS is deductible on this expenditure under section 195 of the Act. (AY. 2016-17)
PPN Power Generating Co. (P.) Ltd. v. ACIT (2022) 194 ITD 623 (Chennai) (Trib.)

S. 40(a)(i): Amounts not deductible-Deduction at source-Non-resident-Commission paid to a resident of UAE –Not liable to deduct tax at source-Disallowance is not justified [S 195]

Held that the commission paid to non resident will not attract the provisions of Section 40(a)(i) of the Act the commission to the non resident has been paid directly by foreign buyer in observance to the terms and conditions of the agreement entered into between the parties. Not liable to deduct tax at source. (AY. 2010-11)

ACIT v. Jiji Industries Ltd. (2022) 64 CCH 0360/ 216 TTJ 858 / 212 DTR 81 (Indore)(Trib.)

S. 40(a)(i) : Amounts not deductible-Deduction at source-Non-resident-Fes for technical services-Sales commission to foreign agents-Permanent Establishment (PE) in India-Not liable to deduct tax at source-OECD Model Convention Arts, 5, 7, 12-DTAA-India-Australia [S. 9(1)(i), 9(1)(vii), 195 Art,7]
Held that the Assessing Officer was not correct in law in holding that commission was paid to agents for rendering technical services in the form of managerial services and since foreign agents did not have permanent establishment in India, no business profit was taxable in India. Disallowance was deleted. (AY. 2010-11-2012-13
Deccan Creations (P.) Ltd. v. DCIT (2022) 193 ITD 5 (Bang) (Trib.)

S. 40(a)(i) : Amounts not deductible-Deduction at source-Non-resident attorneys-Professional fees-Reimbursement of expenses-No obligation to deduct tax at source-Disallowance was deleted-Article 12 of the OECD Model Convention.[S. 9(1)(vii), 195]
Held that payment made towards reimbursement of expenses there is no obligation to deduct tax at source. Disallowance was deleted. Payment made to foreign attorneys are not chargeable to tax under the provisions of section 195. Therefore the assessee was not required to withhold tax on the payments made. Disallowance u/s 40(a)(i)) is deleted. (AY. 2015-16)
Chander mohan Lall v. ACIT (2022) 193 ITD 352/ 215 TTJ 498 / 209 DTR 129 (Delhi) (Trib)

S. 40(a)(i) : Amounts not deductible-Deduction at source-Non-resident –Commission payment-Not liable to deduct tax at source-DTAA-India-France [S. 9(1)(vi), 195, Art, 7, 12]

Assessee appointed a France based trading company as its agent for procuring export orders in France and paid commission to it on export sales. Assessing Officer held that commission paid to agent was in the nature of Fees for Technical Services (FTS) and assessee was liable to deduct TDS on the same. Tribunal held that while rendering services of procuring export orders non-resident agent did not provide any knowledge which could be further exploited by assessee, payment made for said services would not be taxable in India as FTS under India-France DTAA as 'make available' clause was not satisfied. (AY. 2012-13)

Rajinder Kumar Aggarwal (HUF) v. DCIT *(*2022) 192 ITD 1 (Delhi) (Trib.)

S. 40(a)(i) : Amounts not deductible-Deduction at source-Non-resident-Fes for technical services-Grant of license to use its intellectual property and also availed of management services-Services were managerial in nature and not technical services-Not liable to deduct TDS on same-DTAA-India-UK. [S. 195, Art, 13 (4)]

Assessee, a non-resident-company, was engaged in business of undertaking survey of ships for inspection, classification and certification, etc.-A company named (LRS) had been carrying on business of survey, inspection, classification and certification of ships. LRS had entered into a license agreement for grant of license to use its intellectual property to assessee and also management services agreement with assessee and management fees had been paid by assessee to LRS as per management services agreement. Assessing officer disallowed the payment for failure to deduct tax at source. DRP treated management fees as fees for technical services being ancillary and subsidiary to enjoyment of rights under license agreement. On appeal the Tribunal held that since none of tests specified in Memorandum of Understanding which forms part of DTAA in respect of services being ancillary and incidental to enjoyment of rights under license agreement, had been fulfilled in present case, agreement towards management services could not be regarded as ancillary and subsidiary to enjoyment of property under license agreement and consequently, assessee's services were managerial in nature and not technical services. Assessee was not liable to deduct TDS. (AY. 2010-11 to 2015-16)

Lloyd's Register Asia (India Branch Office) DCIT (IT) (2022) 192 ITD 455 (Mum) (Trib.)

S. 40(a)(i) : Amounts not deductible-Deduction at source-Non-resident-Royalty-Software purchased is a copyrighted article-Not liable to deduct tax at source-DTAA-India-USA [S. 9(1)(vi), 195, Art, 9]

Assessee had purchased copyrighted software from a service provider from USA and made payment without deducting tax at source under section 195. Assessing Officer disallowed sum paid by assessee under section 40(a)(i) by holding that amount paid by assessee for acquiring license in software was in nature of royalty as defined under section 9(1)(vi) and was liable for withholding of tax. On appeal the Tribunal held that since software purchased by assessee was a copyrighted article, payment made by assessee for purchase of such software was outside scope of definition of royalty as defined under section 9(1)(vi) and thus, assessee was not required to withhold taxes under section 195 and consequently,

payment made for purchase of software could not be disallowed under section 40(a)(i) for non-deduction of taxes at source. (AY. 2014-15)
Plintron Mobility Solutions (P.) Ltd. v. ITO (2022) 192 ITD 556 (Chennai) (Trib.)

S. 40(a)(ia): Amounts not deductible-Deduction at source-Non-Residents-Payments were made outside India-Not liable to deduct tax at source.

Dismissing the appeal of the Revenue the Court held that there being concurrent findings recorded that the foreign entities receiving the amounts were not Indian residents and subject to tax and that the services rendered were rendered outside India, neither the Tribunal nor the High Court had committed any error in holding against the Department.(AY. 2009-10, 2010-11)

PCIT v. Vedanta Ltd. (2022) 448 ITR 732 /219 DTR 154/329 CTR 265 (SC)
PCIT v. Matrix Clothing Pvt. Ltd (2022) 448 ITR 732 /219 DTR 154/329 CTR 265 (SC)

S. 40(a)(ia): Amounts not deductible-Deduction at source-Commission and sitting fees to directors-Amended provision of section 194J is not applicable-Deletion of addition is justified [S. 194H, 194J]

Dismissing the appeal of the Revenue the Court held that the Tribunal is justified in deleting the disallowances under section 40(a)(i) in respect of commission and sitting fees to the directors of the company, as the amendment to section 194J w.e.f Ist July 2012 was not applicable for the relevant assessment year. (AY. 2008-09)

PCIT v. EIH Ltd (2022) 329 CTR 95/ 218 DTR 389 (Cal)(HC)

S. 40(a)(ia): Amounts not deductible-Deduction at source-Commission, brokerage, etc.-Passenger service fee-Withheld by Airlines-Not liable to deduct tax at source-Verify factual aspect, matter was restored to the file of the Assessing Officer.[S. 194H]

Question raised before the High Court,whether on the facts and in the circumstances of the case and in law the Tribunal was justified in restoring the issue of addition on account of disallowance of collection charges retained by the airlines under Section 40(*a*)(*ia*) with respect to PSF(SC) when the said amount was not claimed by the appellant and when all the facts were already on record?. Court held that passenger service fees (PSF) charges were withheld by Airlines Operators to extent of 2.5 per cent as per clause 1.4 of SOP issued by Ministry of Civil Aviation, no disallowance under section 40(a)(ia) could be made by department, in event, Airlines Operators had offered said 2.5 per cent in nature of payment made by way of commission, which was nothing but income to tax. Verify factual aspect, matter had to be restored to file of Assessing Officer. (AY. 2011-12, 2012-13, 2013-14)

Delhi International Airport (P.) Ltd v. PCIT(2022) 138 taxmann.com 541 (Karn)(HC)

Editorial: Notice issued in SLP filed by Revenue, PCIT v. Delhi International Airport (P.) Ltd. (2022) 289 Taxman 78 (SC)

S. 40(a)(ia): Amounts not deductible-Deduction at source-Commission or brokerage, etc.-Service charges-Not liable to deduct tax at source [S. 194H]

Dismissing the appeal of the Revenue the Court held that service charges paid by assessee to National Financial Switch and Cash Tree consortium for routing transactions of payments made by its customers to acquiring bank would not be liable to TDS under section 194H of the Act.(AY. 2008-09)

CIT v. Karnataka Bank Ltd.(2022) 142 taxmann.com 64 (Karn)(HC)

Editorial : SLP granted to Revenue, CIT v. Karnataka Bank Ltd.(2022) 288 Taxman 725 (SC)

S. 40(a)(ia): Amounts not deductible-Deduction at source-TDS deposited before last date of filing return-No disallowance can be made. [S. 139(1)]

Dismissing the appeal of the Revenue the Court held that where assessee had deducted and deposited TDS on contractual payments under consideration before due date of filing of return of income, disallowance under section 40(a)(ia) was not warranted.(AY. 2010-11)

PCIT v. Punjab National Bank (2022) 449 ITR 468/ 288 Taxman 127 (Delhi)(HC)

S. 40(a)(ia): Amounts not deductible-Deduction at source-Provision for expenses-No disallowance is to be made for failure to deduct tax at source-Tax was deducted when payment was made-Deletion of disallowance is justified. [S. 37(1), 145]

Dismissing the appeal of the Revenue the Court held that the Tribunal was justified in holding that the respondent could not have deducted TDS on provisions made in respect of expenses pertaining to the year under consideration is correct. Moreover, it is not disputed that in subsequent years when actual payments were made TDS has been deducted. (ITA No. 647/2017 dt 29-9-2021)

PCIT v. Rediff. Com India Ltd (Bom)(HC)(UR)

S. 40(a)(ia): Amounts not deductible-Deduction at source-Paid to Non-Resident for technical services-Amount neither debited to profit and loss account nor claimed as deduction-No disallowance can be made. [S. 37(1), 145]

Dismissing the appeal of the Revenue the Court held that the interpretation of the word "deducted" assumes significance in order to decide the applicability of section 40 of the Act. The word "deduction" has been defined to mean the process of taking an amount of money away from a total. An amount can be deducted in computing the business or professional income by taking away the amount from the total profits and gains of such business and profession. While preparing the profit and loss account of a business or profession an amount can be deducted from the professional or business income by debiting the profit and loss account prepared in connection with such profession or business with such amount. Such

amount may also be deducted while computing the profits and gains of business or profession for the purpose of arriving at the business or professional income chargeable to tax. Therefore, if the disputed amount is neither debited from the profit and loss account of the business or profession nor has been deducted while computing the profits and gains of business or profession, section 40 of the Act does not come into operation as such amount cannot be said to have been deducted in computing the income chargeable under such head. Therefore, if an assessee has paid any amount on account of fees for technical services outside India or in India to a non-resident but has not debited such amount to the profit and loss account and has also not claimed it as deduction in computing the income chargeable under the head "Profits and gains of business or profession", no disallowance in respect thereof can be made by invoking the provisions of section 40(a)(ia) of the Act. *(*AY.2007-08)

PCIT v. Linde India Ltd. (2022) 448 ITR 682/ 218 DTR 250/329 CTR 249 (Cal)(HC)

S. 40(a)(ia): Amounts not deductible-Deduction at source-Remuneration to director-Shortfall in tax deduction at source-No disallowance can be made-Proper course of action is invoke section 201 of the Act. [S. 37(1)) 40A(2)(b), 197 (1)), 201]

The Assessing Officer made a disallowance under section 40(a)(ia) of the Income-tax Act, 1961 on the ground that the assessee had made a short deduction of tax on the remuneration paid to its director in violation of section 197(1) of the Act.. Both the Commissioner (Appeals) and the Tribunal gave concurrent findings that the higher salary paid to the assessee's director was accepted as remuneration by the Assessing Officer during the scrutiny assessment in the subsequent assessment year and that the Assessing officer did not bring any evidence or material for making disallowance under section 40A(2)(b) and deleted the disallowance under section 40(a)(ia).Dismissing the appeal of the Revenue the Court held that where there was short deduction of tax at source, disallowance could not be made under section 40(a)(ia) and the correct course of action would have been to invoke the provisions of section 201 of the Act. (AY.2009-10)

PCIT v. Future First Info. Services Pvt. Ltd. (2022)447 ITR 299 /(2023) 290 Taxman 490 (Delhi)(HC)

S. 40(a)(ia): Amounts not deductible-Deduction at source-Tax deposited before filing of return-No disallowance can be made-Amendment made by the Finance Act, 2010 being curative in nature required to be given retrospective operation i.e., from the date of insertion of the said provision. [S. 139(1)]

The assessee had made payment on account of sub-contracting, expenses, transporters, machine hiring charges etc. Out of the payments to sub-contractors, the Assessing Officer found that tax deducted at source (TDS) was deposited beyond due dates prescribed under chapter XVII-B but before the due date of furnishing of return of income. The Assessing

Officer disallowed on various accounts under section 40(a)(ia) of the Act. On appeal CIT(A) held as the amount was deposited within the due date of filing of the return of income no disallowance could be made for delayed deposit of tax. Tribunal affirmed the order of CIT(A). On appeal by revenue, dismissing the appeal the Court held that the disallowance could not have made under section 40(a)(ia) of the Act in view of the retrospective nature of the proviso to the said section. CIT v. Calcutta Export Company (2018) 404 ITR 654/ 255 Taxman 293 /302 CTR 201 (SC) followed (ITA No. 667 of 2018 dt.29-7-2022) (AY. 2005-06)

PCIT v. Crescent Construction Co (2022)288 Taxman 730/ 328 CTR 230 / 217 DTR 74 (Bom)(HC)

S. 40(a)(ia): Amounts not deductible-Deduction at source-Commission paid to Chairman and managing director-Part of salary- provision of section 192 is applicable and not section 194H-TDS is deductible at the time of payment and not when the provision was made-No disallowance can be made. [S. 192, 194H, Form No 16]

Assessee-company made a provision for commission and later, paid said commission to its Chairman and Managing Director (CMD). Assessing Officer held that said payment was to be covered under section 194H and as assessee failed to deduct TDS at time of making provision, same was to be disallowed under section 40(a)(ia) of the Act. CIT(A) deleted the addition which is affirmed by the Tribunal. On appeal the Court held that Chairman and managing Director was full time employee and said commission paid was nothing but salary. Commission paid was shown as part of his salary in Form-16 for relevant assessment year and was included in total salary paid.Accordingly section 192 would be applicable where TDS was required to be paid only at time of payment and no disallowance could be made under section 40(a)(ia) of the Act Followed CIT v. Nagri Mills Co Ltd (1958) 33 ITR 681 (Bom) (HC). (AY. 2010-11)

PCIT v. Indofil Industries Ltd. (2022)285 Taxman 476 / 213 DTR 213/ 327 CTR 603 (Bom)(HC)

S. 40(a)(ia): Amounts not deductible-Deduction at source-Registration of truck Number-Transport contracts-Contract can be only with personnel or driver of Truck or Truck operators and not with trucks-Matter remanded. [S. 194C (2)]

Held, that the registration number of trucks/truck owner would not be relevant for the purpose of deciding the applicability of section 194C as it was the personnel/truck operator from whom the trucks were hired. Denying the deduction under section 40(a)(ia) on the premise that the aggregate of the amount paid by the assessee to the different truck drivers exceeded Rs. 50,000 could not be countenanced as the contract could not be with the trucks, it was with the personnel or driver of the truck or truck operators. Bringing the assessee under the ambit of section 194C to deny the deduction under section 40(a)(ia) was not supported by material evidence. The truck operators if not the truck owners, could not be considered as the sub-contractors for the purpose of section 194C(2). The orders of the Tribunal and the authorities were set aside and the matter was remanded to record a finding after examining the contract if any, entered into by the assessee with the truck owners or operators. Matter remanded.(AY.2008-09)

Shivamurthy v. Add. CIT (2022)441 ITR 405 (Karn)(HC)

S. 40(a)(ia): Amounts not deductible-Deduction at source-Bank charges-Bank guarantee commission-Fee charged by bank-Not liable to deduct tax at source [S. 194H]

Held that the amount retained by bank as bank guarantee commission is a fee charged by them for having rendered banking services and cannot be treated as a commission or brokerage paid in course of use of any services by a person acting on behalf of another for buying or selling of goods and thus, same is not liable to TDS under section 194H. (AY. 2011-12

CIT (TDS) v. ITD Cementation India Ltd. (2022) 285 Taxman 379 (Cal) (HC)

S. 40(a)(ia): Amounts not deductible-Deduction at source-PAN of transporters are reported in form no 26Q-No disallowance can be made for failure to deduct tax at source –Discount to customers not rent-Failure to deduct tax at source-No disallowance can be made. [S. 194C(6), 194C(7), 194I Form No 26Q]

Held that where assessee has obtained PAN of transporters and reported it in Form 26Q as required under section 194C(6) and 194C(7), transportation, freight, clearing and forwarding charges paid by assessee could not be disallowed under section 40(a)(ia) for non-deduction of taxes. Court also held that in absence of prescribed authority nominated under section 194C(7), details of transporters along with PAN submitted in Form 26Q could be construed as sufficient compliance of section 194C(7) of the Act. Court also held that discount to customers who did not use godown of assessee as goods were taken to godown of concerned buyers, said discount could not be disallowed on ground that discount offered were in nature of godown rent on which taxes were not deducted under section 194I of the Act. (AY. 2011-12)

PCIT v. Asian Mills (P.) Ltd. (2022) 285 Taxman 422 (Guj) (HC)

S. 40(a)(ia): Amounts not deductible-Deduction at source-Bank charges-Bank guarantee commission-Fee charged by bank-Not liable to deduct tax at source [S. 194H]

Held that the amount retained by bank as bank guarantee commission is a fee charged by them for having rendered banking services and cannot be treated as a commission or brokerage paid in course of use of any services by a person acting on behalf of another for buying or selling of goods and thus, same is not liable to TDS under section 194H. (AY. 2011-12

CIT (TDS) v. ITD Cementation India Ltd. (2022) 285 Taxman 379 (Cal) (HC)

S. 40(a)(ia): Amounts not deductible-Deduction at source-Commission on sale of lottery tickets-Amount transferred to retailers-Agents-No obligation to deduct tax while transferring incentives to retail vendors. [S. 194G, 194H]

Dismissing the appeal of the revenue the Court held that the assessee being a whole sale dealer / stocki st of lottery has purchased from Government and sold to the retailers. It is accepted as a purchaser from the organizing agency of lottery and sale to retailers.The amount covered is incentive payable by the organizing department to the agent and none of the ingredients required for adding the disputed amount is established. There is no obligation to deduct tax at source.

PCIT v. Usha Murugan(2022) 285 Taxman 122/ 213 DTR 172/ 326 CTR 614 (Ker)(HC)
PCIT v. Meenakshy Enterprises (2022) 285 Taxman 122/ 213 DTR 172/ 326 CTR 614 (Ker)(HC)

S. 40(a)(ia): Amounts not deductible-Deduction at source-Payment to contractor without deduction of tax deduction at source-Disallowance is held to be proper [S. 12AA, 13(1)(c), 234A, 234C]

Dismissing the appeal of the assessee the Court held that the payment to contractor without deduction of tax at source. Disallowance is held to be proper. Court also held that non-compliance with statutory requirements invited consequences of levy of interest under sections 234A and 234B of the Act. The discretion was rightly exercised by the Assessing Officer for levying interest on the tax determined in this behalf.(AY.2012-13)

Ilahia Trust v. CIT (2022) 440 ITR 90/ 209 DTR 355/ 325 CTR 337/ 285 Taxman 312 (Ker)(HC)

S. 40(a)(ia): Amounts not deductible - Deduction at source -Transportation of goods – Finance charges – Matter remanded . [S. 194C (6), 194C(7)]

As regards finance charges the matter is remanded to the file of the Assessing Officer to consider Instruction No. 1425, dated November 16, 1981 issued by the Central Board of Direct Taxes and the certificate to be obtained from the chartered accountant and the returns filed by the recipients declaring such income in their return of income. As regards payment of transportation of goods , the assessee did not file the statement of tax deduction at source within the time with the details of permanent account numbers, names and amount of credit as required by section 194C(7) but only on August 2, 2016 after the initiation of the scrutiny proceedings. The data was not available with the assessee beyond the end of the financial year 2013-14. The disallowance of payments to the transport contractors to the extent for failure to deduct tax at source therefrom was confirmed. .(AY. 2014-15)

Diwakar Logistics v. ACIT (2022) 98 ITR 24 (SN)(Hyd) (Trib)

S. 40(a)(ia): Amounts not deductible - Deduction at source -Rent – Wrong mentioning of section – Disallowance is justified- Truck drivers and transport agencies – Contractors – Matter remanded to produce Permanent Account Number . [S. 194C(6), 194 I]

Held that wrong mentioning of section being typographical error deletion of addition is not justified . Disallowance is affirmed . Tribunal also held that Truck drivers and transport agencies are contractors the assesee is liable to deduct tax at source . However the assessee was granted an opportunity to produce Permanent Account Number . Matter was remanded . (AY.2011-12)

Dy. CIT v. G. N. Enterprises (2022)100 ITR 37 (SN)(Cuttack) (Trib)

S. 40(a)(ia): Amounts not deductible - Deduction at source -Rent – Mentioning of wrong section- Does not absolve assessee of liability for failure to deduct tax at source — Disallowance sustainable- Payment to contractor – Truck drivers and transport agencies - Assessee to be granted opportunity to produce Permanent Account Number details before the Assessing Officer . [S. 194C , 194 IA]

Held, that wrong mentioning of section would not amount to wrong application of jurisdiction. Once an assessment had been validly initiated, typographical errors could take place in respect of mentioning of particular section. Admittedly, the Assessing Officer had invoked his powers under section 40(a)(ia) of the Act for the purpose of making the disallowance on account of non-deduction of tax at source. Admittedly, reference to the relevant section under which tax at source should have been done was wrong. This did not excuse the assessee for non-deduction of tax at source. The order of the Commissioner (Appeals) deleting the disallowance was to be reversed and the order of the Assessing Officer on this issue restored. Regards payments to contractors the matter was remanded to the Assessing Officer to grant an opportunity to produce Permanent Account Number details.(AY.2011-12)

Dy. CIT v. G. N. Enterprises (2022)100 ITR 37 (SN)(Cuttack) (Trib)

S. 40(a)(ia): Amounts not deductible - Deduction at source -Deduction at lower rate – No disallowance can be made .

Held that the disallowance under section 40(a)(ia) was not attracted in a case of short deduction of tax at source. (AY.2013-14)

Roca Bathroom Products Pvt. Ltd. v. Dy. CIT (2022)100 ITR 65 (SN)(Chennai) (Trib)

S. 40(a)(ia): Amounts not deductible - Deduction at source -Employyes on deputation-Cost of empployees – Associated enterprises – Reimbursement of expenses - Salary without deduction of tax at source – Income offered in the hands of employees – Matter remandec for verification . [S. 192, 201]

Assessee made payment to associate enterprises towards cost of employees' salary without deduction of tax at source and stated that payment was in nature of reimbursement of expenses .Assessing Officer disallowed payment made to associate enterprises under section 40(a)(ia) for non deduction of tax at source . Tribunal held that the assessee had furnished necessary certificates from associate enterprises so as to show that sum paid by it to associate enterprises was accounted for in their account books and was also offered for taxation . Matter remanded for verification . (AY. 2012-13)

George Maljo Industries (P) Ltd. v. ITO (2022) 219 TTJ 35 (UO) / 146 taxmann.com 95 (Chennal)(Trib)

S. 40(a)(ia): Amounts not deductible - Deduction at source -Purchase of material and online advertisement- General expenses -Matter remanded .[S.194C]

Assessee made payments towards purchase of material and online advertisement and submitted that no TDS was deductible on such payments .Assessing Officer made disallowance of expenses under section 40(a)(ia) on ground that assessee had not deducted tax at source under section 194C of the Act . Commissioner (Appeals) confirmed disallowance . Tribunal held that as no findings on merits of disallowance had been recorded by Commissioner (Appeals), matter was set aside to examine on merits . General expenses , contention was raised for the first time . Matter was set aside to CIT(A) (AY.2010 -11)

Kamla Retail Ltd. v. Addl. CIT(2022) 212 DTR 94 / 216 TTJ 483 / 140 taxmann.com 343 (Chd)(Trib)

S. 40(a)(ia): Amounts not deductible - Deduction at source –Exemption granted on income as enhanced by disallowance. [S. 10A]

The Tribunal held that regardless of the merits of the disallowances under section 40(a)(ia), since the assessee was entitled to deduction under section 10A of the Act, it was entitled to deduction under section 10A of the Act on the assessed income as enhanced due to the disallowance of the expenditure on account of freight charges and expenses on hotel accommodation. (AY.2008-09)

Agilent Technologies (International) Pvt. Ltd. v .ACIT (2022)97 ITR 326 (Delhi) (Trib)

S. 40(a)(ia): Amounts not deductible - Deduction at source – No permanent establishment – Service rendered for a period of 10 days to 27 days – Not liable to deduct tax at source .[S.9(1)(vii), 40(a)(i))]

Held thatthe payments had been made to a non-resident not having a permanent establishment and hence the provisions of section 40(a)(i) would not apply. Disallowance was deleted . (AY. 2012-13).

Dy. CIT v. Jagson International Ltd. (2022) 97 ITR 176 (Delhi) (Trib)

S. 40(a)(ia): Amounts not deductible - Deduction at source – Shortfall of amount deducted- Not tantamount to non -deduction tion Cannot be disallowed- Recovery of shortfall with interest- disallowance not justified.[S.194A, 201(1) , 201(IA)]

The Tribunal held that the sole purpose of section 40(a)(ia) was to put a check on payments made by an assessee. Thus, it cannot be said that when the assessee has deducted tax at a different rate, the shortfall in deduction of tax , disallowance cannot be made . Interest can be revered for shortfall of the amount . (AY.2013-14)

M. V. A. Seetharama Raju v. Dy. CIT (2022) 97 ITR 714 (Chennai) (Trib)

S. 40(a)(ia): Amounts not deductible - Deduction at source - Lorry hire charges — Payment to individual not exceeding prescribed limit — Not liable to deduct tax at source – Disallowance is not justified .

The Tribunal held that the assessee did not have any sub-contract and he was hiring trucks from the open market on individual and need basis. The assessee had filed Truck numbers of different trucks owned by different Truck owners. The payments had not been made to any subcontractor. Payment to individual not exceeding prescribed limit the assessee is not liable to deduct tax at source. Disallowance is not justified .(AY. 2007-08)

Dineshbhai Bhavanbhai Bharwad v. ITO (2022) 96 ITR 429 (Ahd)(Trib)

S. 40(a)(ia): Amounts not deductible - Deduction at source –Recipients shown the amount in their return of income – Certificate was produced first time before the Appellate Tribunal - Matter remanded to the Assessing Officer for verification . [S. 201(1),201(1A)

The Assessing Officer disallowed the payment made to parties on the ground that the tax was not deducted at source which was affirmed by the CIT(A) . On appeal before the Tribunal the assessee has produced the certificate which stated that the recipients have shown the receipts in their income tax return . Tribunal Remanded the matter to the Assessing Officer for verification . Followed CIT v. Hindustan Coco Cola Beverages Pvt Ltd (2007) 293 ITR 226 (SC) (AY. 2012 -13)

George Maijo Industries P. Ltd v. ITO (2022) 95 ITR 67 (SN) (Chennai)(Trib)

S. 40(a)(ia): Amounts not deductible - Deduction at source -On Payment of commission and interest in subsequent year — Rate of tax same -Order of CIT(A) is affirmed . [S.194A, 194H]

Held, that section 40(a)(ia) , as amended by the Finance Act, 2010 , with effect from April 1, 2010 was applicable from the date section 40(a)(ia) was inserted in the Act. The assessee had deducted tax at source on the payment of commission and interest on June 7 and 11, 2008 respectively which was in the subsequent year. The case of the assessee was therefore not covered by the main section and the proviso is applicable. However, the appeal was for the assessment year 2008-09 and 13 years had passed. Therefore, making disallowance for the assessment year 2008-09 and allowing the deduction for the assessment year 2009-10 was an unnecessary exercise. The rate of tax remained the same for the assessment years 2008-09 and 2009-10. And the disallowance for the assessment year 2008-09 would be a revenue neutral exercise. The order of the Commissioner (Appeals) called for no interference.(AY.2008-09)

ITO v. H. Omkarappa HUF (2022)95 ITR 26 (SN)(Bang) (Trib)

S. 40(a)(ia): Amounts not deductible - Deduction at source - Subsequent amendment to law with retrospective effect requiring deduction of tax at source – Disallowance is not justified .[S. 195]

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Held that the assessee could not be expected to deduct tax at source on payments made to non-residents on the basis of subsequent amendment to the law with retrospective effect from earlier date, because the assessee could not foresee the amendment. Hence, the Assessing Officer erred in disallowing the payment made to non-residents under section 40(a)(i) of the Act, for failure to deduct tax at source under section 195 of the Act.(AY.2008-09 to 2010-11)

Rane Engine Valves Ltd. v .Dy. CIT (2022)95 ITR 5 (SN)(Chennai)(Trib)

S. 40(a)(ia): Amounts not deductible - Deduction at source -Management fees paid overseas, transfer pricing additions- Double taxation – Addition was deleted. [S.92CA]

The assessee paid management fees to its associated Enterprise in Canada during the year. No TDS was deducted on the said payments and accordingly, S. 40a(ia) of the Act was invoked to disallow the entire expenditure. Thereafter, the Transfer Pricing Officer determined that these fees are in the nature of Shareholder services and accordingly determined the value at Nil, i.e. entire amount was added back. Held that addition under S. 92CA, as well as S. 40a(ia) result in double taxation and appeal of the assessee allowed. (AY. 2010 -11, 2011 -12 , 2012 -13)

McCain Foods India (P) Ltd. v. ACIT (2022) 215 DTR 148 / 218 TTJ 393 / 141 taxmann.com 164 (Delhi)(Trib)

S. 40(a)(ia): Amounts not deductible-Deduction at source-Rent paid to various parties-Less than Rs. 1,20,000 to each party-Remanded to the Assessing Officer for verification.[S. 194I]

The Assessing Officer disallowed the rent paid to various parties for failure to deduct tax at source. The assessee contended that all payments were made below the amount of Rs. 1.20 lakhs and, therefore, tax was not deducted. Matter is remanded to the Assessing Officer for verification. (AY. 2011-12)
Vardhman Shipping (P.) Ltd. v. (2022) 197 ITD 250/ 98 ITR 3(SN) (Ahd) (Trib.)

S. 40(a)(ia): Amounts not deductible-Deduction at source-Contractors/sub-contractors-Payments to Making charges-Manufacturing of gold and silver jewellery-Wastage left with goldsmiths-Not liable to deduct tax at source.[s. 194C]

Assessee is engaged in manufacturing of gold and silver jewellery. During the year the assessee issued certain quantity of gold to goldsmiths for making new ornaments but received back lesser quantity and balance was left with goldsmiths which was claimed as wastage by assessee. Assessing officer held that assessee had shown wastage ranging between 4.5 per cent to 6 per cent, however, wastage would be only in range of 0.5 per cent to 1 per cent and excess amount of gold retained by goldsmiths was actually in lieu of making charges. He further noted that such making charges were paid without deduction of tax at source under section 194C and, accordingly, disallowed the same. Held that since no payment or credit of any sum by way of cash, issue of cheque or draft or by any other mode was made by assessee to goldsmiths, provision of section 194C was not attracted. (AY. 2013-14, 2014-15)
P.R. Gold and Silver Craft. v. PCIT (2022) 197 ITD 672/ (2023) 102 ITR 362 (Chennai) (Trib.)

S. 40(a)(ia): Amounts not deductible-Deduction at source-Contribution to Turf Authorities of India for conducting an event-Meet expenditure-Not liable to deduct tax at source-Subsidies to promote horse racing-Failure to mention which section of TDS provision is applicable-Addition was deleted
Assessee made contribution to Turf Authorities of India for conducting an event. Assessing Officer disallowed the payment for failure to deduct tax at source. Held that since payments were made before event to meet expenses to conduct event, said contributions would not attract TDS and disallowances made by Assessing Officer were to be deleted. Assessee provided different kind of subsidies to promote horse racing as part of its objectives. AO made disallowances on ground that assessee failed to deduct TDS on said payments. Held that since AO failed to point out sections under which assessee would be liable to deduct tax at source, said disallowances were to be deleted.(AY. 2013-14
Mysore Race Club Ltd. v. ACIT (2022) 196 ITD 140 (Bang) (Trib.)

S. 40(a)(ia): Amounts not deductible-Deduction at source-Payments to employees-Audit mistake-Required to get a revised tax audit report/addendum-Matter remanded [S. 44AB, 147, 194C]

Held that where additions made to the income of the assessee by AO on the ground that there were labour payments made by the assessee to contractors on which no income tax was deducted at source under section 194C were deleted by Commissioner (Appeals) on the ground that these payments were made by the assessee to its employees and not to contractors. Since the assessee had not been able to substantiate that payments were made

to its employees, the matter was to be remanded back to Assessing Officer for adjudication afresh. Held that when the tax auditors had committed inadvertent error in reporting figures/details in the tax audit report in Form No. 3CD, he was required to get a revised tax audit report/addendum thereto issued by the tax auditor and produce same for verification; merely submitting reconciliation of figures of interest income reported in P&L account with interest income reported in Form No. 3CD would not suffice. (AY. 2011-12)
ACIT v. J.P. Yadav. (2022) 195 ITD 505 / 214 DTR 273 / 217 TTJ 857 (All) (Trib.)

S. 40(a)(ia): Amounts not deductible-Deduction at source-Interest to non-banking financial corporation-Salary to directors-Form No. 26A filed as additional evidence-Matter remanded [S. 192, 194A, 201]

Assessee made payment of interest on loans to certain Non-Banking Financial Corporations (NBFCs) without deduction of tax at source. Assessing Officer disallowed the amount of interest under section 40(a)(ia) of the Act. Before the Tribunal the Assessee submitted additional evidence copies of Form No. 26A wherein it had been certified that NBFCs had taken into account the sum received as interest from the assessee while computing its taxable income in return filed. Directors have shown the salary in their respective return of income. Matter was remanded to Assessing Officer for de novo adjudication as per law after necessary verification of details submitted by way of additional evidence.(AY. 2014-15)
Bhushan Logistics (P.) Ltd. v. ITO (2022) 195 ITD 756 (Mum) (Trib.)

S. 40(a)(ia): Amounts not deductible-Deduction at source-Rent-Payment to each party less than Rs. 1,50,000-Not liable to deduct tax at source-Directed to delete the disallowance [S. 194I]

Held that as per leave and license agreement executed between the parties payment of each party was less than Rs. 1,50, 000, hence not liable to deduct tax at source. (AY. 2014-15)
Bhushan Logistics (P.) Ltd. v. ITO (2022) 195 ITD 756 (Mum) (Trib.)

S. 40(a)(ia): Amounts not deductible-Deduction at source-Royalty-Payments to foreign company for rendering internet private line services-Ambiguity in definition of royalty-Disallowance is not valid-DTAA-India-USA [S. 9(1))(vi), 9(1))(vii), 195, Art. 12]

Assessee-company had made certain payments to foreign company for rendering internet private line services and such services were rendered through an equipment in USA and India via internet. Assessing Officer had considered said payments as royalty under section 9(1)(vi)/9(1)(vii) read with article 12 and disallowed said payment for non-deduction of TDS under section 195. On appeal the Tribunal held that the definition of royalty, before insertion of Explanation 4 by Finance Act, 2012 with retrospective effect from 1-4-1976 does not cover payment made to non-resident for rendering services outside India and also receipt of services outside India. Since said payment was made prior to amendment in definition of royalty and further, at time of payment made by assessee to non-residents, there was an ambiguity in definition of royalty and due to this assessee could not deduct TDS as per provisions of section 195, Assessing Officer erred in making addition for non-deduction of TDS under section 195 of the Act. (AY. 2012-13)
Ceequence Technologies (P.) Ltd. v. DCIT (2022) 194 ITD 693 (Chennai) (Trib.)

S. 40(a)(ia): Amounts not deductible-Deduction at source-Interest on Bank loans-Interest paid on bank loans is not liable to TDS deduction and hence disallowance is not called for-Matter remanded for verification. [S. 37(1)]

Held that interest paid on bank loans is not liable to TDS deduction and hence disallowance under section 40(a)(ia) is not called for. However, Commissioner (Appeals) having confirmed disallowance only for want of evidence, it is viewed that assessee should be provided with an opportunity to produce evidences in support of its claim and accordingly, order passed by Commissioner (Appeals) on this issue was to be set aside and restored to file of Assessing Officer for examination afresh. (AY. 2016-17)

TUV Rheinland NIFE Academy (P.) Ltd. v. ACIT *(*2022) 194 ITD 78 (Bang) (Trib.)

S. 40(a)(ia): Amounts not deductible-Deduction at source-Tax deducted by applying wrong provision of the Act-Lower rate-No disallowance can be made. [S. 201(1), 201(IA)]

Held that once any payment made by assessee, which is covered under provisions of section 40(a)(ia), is subjected to TDS, but assessee has deducted TDS by applying wrong provisions of Act or at lower rates, sum paid by assessee cannot be disallowed on ground that assessee has deducted TDS at lower rates or under wrong TDS provisions of Act. Unless Assessing Officer points out specific defects in expenditure claimed by assessee, ad-hoc disallowance can not be made for reason that assessee has not filed any evidence to justify said expenses cannot be invoked. (AY. 2013-14)

M.V.A. Seetharama Raju. v. DCIT (2022) 194 ITD 359/ 97 ITR 714 (Chennai) (Trib.)

S. 40(a)(ia): Amounts not deductible-Deduction at source-Contractors/sub-contractors - Custom House agent, to shipping companies/CFS agents-Failure to deduct tax at source-Disallowance is valid [S. 194C]

Assessee, a Custom House Agent, had made payment to shipping companies CFS Agents on behalf of its customers and claimed that payment was in nature of reimbursement of expenses and thus, outside scope of section 194C. Assessing Officer disallowed said payments under section 40(a)(ia) for non-deduction of TDS. Tribunal held that since payment made by assessee to CFS Agents was covered under section 194C, for non-deduction of TDS on such payments, Assessing Officer had rightly made disallowance under section 40(a)(ia) of the Act. (AY. 2009-10, 2010-11)

Shri Shanmugar Services. v. ITO(2022) 194 ITD 747 (Chennai) (Trib.)

S. 40(a)(ia) : Amounts not deductible-Deduction at source-
Payer and payee comply with the first proviso to S. 201(1)-No disallowance can be made.[S. 201(1)]

Assessee made payment of interest to NBFC without deducting any TDS. Consequently, the Ld. AO made disallowance u/s. 40(a)(ia). On appeal, the CIT(A) upheld the disallowance made. On further appeal, before the Hon'ble ITAT, the assessee filed additional evidence in the form of a certificate from a Chartered Accountant ('CA') as per the proviso to S. 201(1). In the said certificate, the assessee justified that the said payment made to NBFC was offered to tax by such NBFC as income and the due tax on the same was also paid by the NBFC. Hence the assessee contended that once the three conditions under proviso to S. 201(1) are satisfied, then no disallowance can be made. This contention of the assessee was also upheld by the Hon'ble Supreme Court in the case of M/s. Hindustan Coca Cola Beverages Pvt. Ltd. (CA NO.3765 of 2007 dated 16.08.2007). Thus, in view of the certificate of CA filed, the

assessee was no longer to be considered as an assessee-in-default and the disallowance made was to be deleted. (AY. 2010-11)
Milind Kumar Rana v. ACIT (2022) 216 TTJ 43 (UO) (Raipur)(Trib.)

S. 40(a)(ia): Amounts not deductible-Deduction at source-Car hire charges-Fixed rental charges-Liable to deduct tax at source u/s 194I and not u/s 194C-Disallowance was deleted [S. 194C, 194I]

The assessee deducted the tax at source on car hire charges u/s 194I of the Act. The AO held that the car hire charges fall under category of contract for services and applied the provision of section 194C and disallowed the payment. On appeal the Tribunal held that the car hire charges was paid on the basis of fixed rental charges and the car was hired for specific services hence the provision of section 194I is applicable. Accordingly the addition was deleted. (ITA No. 1559/ Ahd/2019 dt 30-3-2022)(AY. 2014-15)
Akshatam Construction LLP v. DCIT (2022) The Chamber's Journal-May-P. 82 (Ahd) (Trib)

S. 40(a)(ia): Amounts not deductible-Deduction at source-Advertisement expenditure-Late fee and service tax-Disallowance is not valid.
The assessee has not deducted tax at source on late fees and service tax. The AO disallowed the amount for failure to deduct tax at source. On appeal CIT(A) affirmed the order of AO. On appeal the Tribunal held that the TDS provisions did not apply to late fees and service tax hence disallowance was not valid. (ITA.No 1013 /Ahd / 2019 (Ahd) dt. 29-6-2022)(AY. 2013-14)
Prithvi Outdoor Publicity LLP v. CIT (2022) BCAJ-September-P. 49 (Ahd)(Trib)

S. 40(a)(ia): Amounts not deductible-Deduction at source-Upon failure on the part of the Assessee to provide reconciliation of expenses, its nature and TDS deductions, the alternate plea to allocate the expenses so disallowed over the STPI units of the assessee while computing the relief under section 10A was accepted.

Held that the assessee has only provided a broad reconciliation of the various expenses codes, the nature of expenses and the corresponding tax withholding and in certain expenses reasons as to why tax withholding was not applicable. Therefore, the assessee admits that due to significant transaction, it is not possible to provide a reconciliation at transactional level. Therefore, the disallowance is confirmed under section 40(a)(ia) of the Act. However, the AO is directed to allocate the expenses so disallowed over the STPI units of the assessee while computing the relief under section 10A of the Act.(AY. 2009-10)

Dell International Services India (P.) Ltd v. JCIT (2022) 94 ITR 247 (Bang)(Trib)

S. 40(a)(ia): Amounts not deductible-Deduction at source-Payment to consolidator for right in land-Not liable to deduct tax at source-Cost with regard to AY. 2008-09 cannot be disallowed in the AY. 2013-14 [S. 37 (1), 194H]

Held that during the financial year 2007-08, the assessee had requirement to purchase contiguous piece of land for its housing project and had entered into memorandum of understanding with SBPL to provide contiguous piece of land which in turn it was to be acquired from various farmers and land owners. The memorandum of understanding clearly showed that there was an arrangement or understanding between SBPL and the land owners

and SBPL was paid for assigning, relinquishing and transferring all its present and future rights in the land to be registered in the name of the assessee. Most importantly, all these payments were made in the financial year 2007-08. Now, the expenditure incurred in the AY. 2008-09 was disallowed in the AY. 2013-14 under section 37(1) of the Act. There was no basis for disallowance of payments and the cost with regard to the financial year 2007-08 (AY. 2008-09) in the AY. 2013-14. The Tribunal also held that the disallowance made by the Assessing Officer on protective basis under section 40(a)(ia) of the Act was also baseless because the payments made to the consolidators of land were for the purpose of renouncing right and interest in the land and the assessee and the consolidator were transacting on principal-to-principal basis and the payments could not be regarded as commission or brokerage. Therefore, the assessee could not be held liable to deduct tax at source in terms of section 194H of the Act.(AY. 2013-14)

ITO v. Experion Nirman P. Ltd. (2022)94 ITR 33 (SN)(Delhi)(Trib)

S. 40(a)(ia): Amounts not deductible-Deduction at source-Membership and subscription charges-Not liable to deduct tax at source.
Held that the payments made on account of membership and subscription charges and the membership expenses relating to the Maharani of India Retail Division. Not liable to deduct tax at source.Disallowance cannot be made. (AY. 2014-15)

Maharani of India v.ACIT (2022)94 ITR 8(SN) (Delhi)(Trib)

S. 40(a)(ia): Amounts not deductible-Deduction at source-Non-Resident rendering services of Information Technology infrastructure-Royalty-Liable to deduct tax at source-Disallowance is justified-DTAA-India-Portugal.[S. 9(1)(vi), Art,]
Held that the amount paid by the assessee was chargeable to tax in entirety in the hands of the non-resident. The Assessing Officer was justified in making the disallowance under section 40(a)(ia) owing to the assessee's failure to deduct tax at source from payment to its associated enterprise, NVB, which was chargeable to tax in the hands of the foreign entity.(AY.2012-13)

Bekaert Industries P. Ltd. v. Dy. CIT (2022) 194 ITD 201/ 93 ITR 462 (Pune) (Trib)

S. 40(a)(ia): Amounts not deductible-Deduction at source-Bank guarantee commission and credit card commission-Deducted by Banks-No disallowance can be made.

Held, that it was the normal trade practice in this business to accept the payment through credit cards and debit cards. For facilitating the payment through credit cards and debit cards, the bank deducted some bank charges automatically upon receipt of payment. Only the net amount was actually received by the assessee. Therefore, the disallowance made under section 40(a)(ia) not sustainable.(AY.2013-14, 2014-15)

ACIT v. PC Jewellers Ltd. (2022)93 ITR 244 (Delhi)(Trib)

S. 40(a)(ia): Payment For Pest Control after deduction of tax at source-No disallowance can be made-Building maintenance-Matter remanded.[S. 194C]
Held that on payment of pest control expenses, the assessee has deducted tax at source and has fulfilled the conditions laid down in section 194C of the Act. To this extent no disallowance should be made. In respect of balance, no details of day to day expenditure have

been furnished. The assessee was to furnish details of day to day expenditure on account of building maintenance and the Assessing Officer was to verify them in light of provisions of section 194C of the Act and decide the issue afresh as per the provisions of law.(AY.2011-12)

Niyant Heritage Hotels (P.) Ltd. v ITO (2022)93 ITR 11 (SN)(Delhi) (Trib)

S. 40(a)(ia): Amounts not deductible-Deduction at source-Interest to an NBFC-Certificate was produced before CIT(A)-Matter was remitted to file of Assessing Officer to examine and verify said certificate. [S. 194A, 201(1)]

Held that the Commissioner (Appeals) had failed to take into consideration the certificate which was produced before him. Matter remitted to file of Assessing Officer to examine and verify said certificate. (AY. 2013-14)
Amit Mehra. v. ITO (2022) 193 ITD 109 (Delhi) (Trib.)

S. 40(a)(ia): Amounts not deductible-Deduction at source-Copies of PAN along with copies of invoices of transportation bill etc was furnished-Disallowance cannot be made on technical ground [S. 194C (7)]

Tribunal held that where assessee had furnished copies of PAN along with copies of invoices of transportation bill comprising complete address of transporter, phone no. and complete particulars of goods loaded through transportation and thereby led full evidences to establish genuineness of payment made for freight to transporters, same could not have been disallowed simply for technical lapse under section 194(7) of the Act. (AY. 2012-13)
Mohmed Shakil Mohmed Shafi Mutawalli. v. ITO (2022) 192 ITD 130 (Ahd) (Trib.)

S. 40(a)(ib) : Amounts not deductible - Equalisation levy - Failure to deduct equalisation levy – Specified services – Chanalising the funds for advertisement – Websites - Disallowance not attracted.[Finance Act , 2016 , S.165]
Dismissing the appeal of the Revenue the Tribunal held that the role of the assessee was that agent of Singapore company where by the assessee was granted access for the purpose of advertisement to be made in the website . The assessee only acted as a conduit for channelizing the funds from the person wanting to advertise to the platform on which such advertisement was to be done , i, e .Google . The person running the advertisement , the person displaying the advertisement and the person using that advertisement were all outside India . In view of this these specified services were not provided to a resident in India . Thus , when the targeted audience and the party paying the online advertisement had no relation in India , the equalisation levy was not attracted . Order of the National Faceless Appeal Centre was affirmed . s (AY. 2018 -19)
Dy.CIT v. Prakash Chandra Mishra (2022) 100 ITR 300(Jaipur)(Trib)

S. 40(a)(ic) : Amounts not deductible - Fringe benefit tax -Paid aboard - FBT paid in Australia is eligible for deduction. [S. 37(1)]

Held that Fringe benefit tax paid abroad cannot be brought within the purview of s. 40(a) (ic) as it is not a FBT under chapter XII-H and, therefore, the amount of the FBT paid in Australia is eligible for deduction. Followed Reliance Infrastructure Ltd. v. CIT (2017) 390 ITR 271 (Bom)(HC). (AY. 2013-14)

Capgemini Technology Services India Ltd. v. Dy. CIT (2022) 220 TTJ 409 (Pune) (Trib)

S. 40(a)(ii) : Amounts not deductible-Rates or tax-Education cess-In view of retrospective amendment *vide* Finance Act, 2022 to section 40(a)(ii), education cess paid not allowable as an expenditure [S. 37(1)]

The Rajasthan High Court reversed the order of the Income Tax Appellate Tribunal and held that in view of the circular of CBDT, 'cess' was not 'tax' and hence, could not be disallowed under section 40(a)(ii) (pre-amended). The Revenue challenged the High Court's order before the Supreme Court. The Supreme Court held that in view of the amendment *vide* the Finance Act, 2022 with retrospective effect from 1-4-2005 to section 40(a)(ii), Education cess paid assessee was not allowable as an expenditure. Accordingly, the Supreme Court allowed the Revenue's appeal.

JCIT v. Chambal Fertilisers & Chemicals Ltd. (2022) 220 DTR 481 (SC) / (2023) 450 ITR 164 /291 Taxman 438/ 330 CTR 110 (SC)

S. 40(a)(ii) : Amounts not deductible - Rates or tax – Education cess – Not allowable as deduction .[S. 37(1), Finance Act , 2011, S. 2(11)]

Held that the Education Cess being an additional surcharge levied on income-tax part of income-tax and, therefore, education Cess is not allowable as deduction . (AY. 2012 -13)

Dy. CIT v. Kanoria Chemicals & Industries Ltd. (2022) 215 TTJ 1003 (Kol)(Trib)

S. 40(a)(ii) : Amounts not deductible - Rates or tax - Deduction of tax at source is not in nature of Income-Tax — Interest paid upon late payment of deduction of tax at source cannot be disallowed. [S. 28, 37(1), 199, 201(1a)]

The Tribunal held that the deduction of tax at source was not in the nature of the Income-tax which was required to be paid on profits and gains chargeable to tax under section 28 of the Act and thus was not disallowable under section 40(a)(ii) of the Act. The consequent interest paid under section 201(1A) of the Act upon late payment of tax deduction at source also could not be disallowed under section 40(a)(ii) of the Act. Therefore, the disallowance of interest paid on belated payment of tax deducted at source was deleted. (AY. 2014-15)

Welkin Telecom Infra (P.) Ltd. v. Dy. CIT (2022)96 ITR 475 (Kol) (Trib)

S. 40(a)(ii) : Amounts not deductible - Rates or tax – Net interest paid to bank- As per terms of the agreement -Withholding tax – Matter remanded for verification [S. 37(1)]

As per terms of agreement between the parties, the assessee shall borne all applicable taxes on interest payment to the lenders. As per terms of agreement, the assessee has grossed up interest payment towards TDS paid on said interest and remitted into Govt. account and also debited withholding tax to the profit & loss account. Tribunal held that withholding tax paid by the assessee to the Govt. account on behalf of the lenders in terms of agreement between the assessee is nothing, but cost of borrowings (interest to the assessee) and thus, the assessee is entitled to claim deduction for said withholding tax u/s.37(1) of the Income Tax Act, 1961. However, fact remains that although, the assessee claims to have filed all details, but the Assessing Officer observed that the assessee does not furnish any evidence to substantiate its claim. Matter was remanded to the file of the Assessing Officer and directed the Assessing Officer to examine claim of the assessee in light of agreement between the parties. In case, claim of the assessee is correct, then the Assessing Officer is directed to delete addition made towards withholding tax u/s.40(a)(ii) of the Act. (AY. 2011 -12)

Hyundai Steel India P. Ltd v. Dy.CIT(2022) 95 ITR 65 (Chennai)(Trib)

S. 40(a)(ii) : Amounts not deductible - Rates or tax - Education cess and secondary and higher education cess deductible .

Held that as the additional ground raised by the assessee was a question of law, it could be raised at any stage of the proceedings and was, therefore, to be admitted. Education cess and secondary and higher education cess were allowable deductions, not being hit by section 40(a)(ii).(AY.2006-07, 2007-08, 2008-09)

Expeditors International (India) Pvt. Ltd. v. Dy. CIT (2022)95 ITR 393 (Delhi) (Trib)

S. 40(a)(ii) : Amounts not deductible-Rates or tax-Education cess is not allowable as deduction. [S. 37 (1)]

Explanation 3 to section 40(a)(ii) inserted by Finance Act, 2022 with effect from 1-4-2005 makes it clear that any surcharge or cess forms part of 'tax' and same cannot be allowed as deduction while computing profits and gains of business of assessee. Therefore, education cess is not allowable as deduction. (AY. 2016-17)

Cypress Semiconductor Technology India (P.) Ltd. v. DCIT (2022) 197 ITD 31 (Bang) (Trib.)

S. 40(a)(ii) : Amounts not deductible-Rates or tax-Education cess cannot be equated as tax or surcharge-Allowable as business

Held that education cess cannot be equated as tax or surcharge and it cannot be considered as a part of tax, and accordingly, it should not be disallowed under section 40(a)(ii) of the Act. Allowable as business expenditure. (AY. 2011-12)

Security Printing & Minting Corporation of India Ltd. v. ACIT (2022) 194 ITD 641 (Delhi) (Trib.)

Editorial: Refer, JCIT v. Chambal Fertilisers & Chemicals Ltd. (2022)) 145 taxmann.com 420 (SC) held not allowable.

S. 40(a)(ii) : Amounts not deductible-Rates or tax-Additional ground admitted-Education Cess and Higher and Secondary Education Cess are allowable as deduction.[. 28(i), 37 (1), 254(1)]

The assessee filed additional ground and claimed that the education cess on the tax payable by him should have been allowed while computing his income for the year under consideration. This additional ground of appeal was being raised on the basis of the recent judgment of the High Court of Bombay in the case of Sesa Goa Ltd. v. Jt. CIT [2020] 117 taxmann.com 96. Additional ground was admitted and directed the Assessing Officer to follow the order of jurisdictional High Court and to grant consequential effect to aforesaid observations. (AY. 2010-11)

Ashok Kirtanlal Shah. v. ACIT (2022) 192 ITD 193 (Mum) (Trib.)

Editorial: Refer, JCIT v. Chambal Fertilisers & Chemicals Ltd. (2022)) 145 taxmann.com 420 (SC) held not allowable.

S. 40 (a)(iib) :Amounts not deductible-Fee-Tax-Gallonge fee, licence fee and shop rental (KIST) with respect to EL-9 and E.L-I licence granted will fall with in the purview of section and hence disallowable-Surcharge on Sales tax and turnover tax is not fee or

charge hence not disallowable-Interpretation of taxing statutes-Same statute using different terms and expressions-Must be taken to refer to distinct and different things. [S. 37(1)), Kerala Abkari Act, 1077 (M.E.) S. 18, Kerala Foreign Liquor Rules, 1953, R. 15A]

Gallonage fee, license fee and shop rental payable by the assessee, which is a state government undertaking is not deductible. The exclusivity referred to in the section is not to be seen in terms of the number of entities which are covered by the policy but the nature of the undertakings which are covered. However, surcharge on sales tax and turnover tax are not disallowable under the section as the same is not a fee or a charge. Court also observed that it is a settled principle of interpretation that where the same statute uses different terms and expressions, it is clear that the Legislature is referring to distinct and different things. (AY. 2014-15, 2015-16)

Kerala State Beverages Manufacturing and Marketing Corporation Ltd. v. ACIT (2022) 440 ITR 492 / 209 DTR 257/ 324 CTR 209 / 286 Taxman 1 (SC)

Editorial : Decision of Kerala High Court partly affirmed and partly reversed. (2022) 440 ITR 496 (SC)

S.40(a)(iib):Amounts not deductible-Guarantee commission-Not liable to deduct tax at source-Not in the nature of levy on a State Government undertaking by State Government-Contract payment-Allowable as business expenditure [S. 37(1)]

During the year, assessee made payment of guarantee commission and claimed same as expenditure wholly incurred for purpose of business under section 37(1) of the Act. Assessing Officer held that assessee ought to have deducted tax at source on guarantee commission paid to Government of Karnataka as per provisions of section 40(*a*)(iib) of the Act hence disallowed the expenditure. CIT(A) confirmed the order of the Assessing Officer. On appeal the Tribunal held that since guarantee commission was paid in consideration for State Government agreeing to suffer a detriment in event of assessee not repaying loan guarantee commission was not in nature of a 'levy' on a State Government undertaking by State Government and it was purely a contractual payment and did not fall within purview of section 40(a)(iib) of the Act. (AY. 2014-15)

Krishna Bhagya Jala Nigam Ltd. v. ACIT (2022) 192 ITD 666 (Bang) (Trib.)

S. 40A(2): Expenses or payments not deductible-Excessive or unreasonable-Remuneration to director-Bonus to directors-Rule of consistency-Deletion of addition is held to be justified. [S. 36(1)(ii), 40A(2)(b), Payment of Bonus Act, 1965]

Held that none of authorities below had opined that grant of bonus to directors would either endanger existence of corporate entity or was prohibited under Payment of Bonus Act, 1965 or was not proportionate to services rendered by directors. In fact in previous assessment years, similar payment of bonus to directors had been upheld and no distinguishing feature had been brought to notice of Tribunal. In view of consistency of approach, uniformity and certainty, order of Tribunal is affirmed. (AY 2015-16)

PCIT v. BMO Advisors (P) Ltd. (2022) 287 Taxman 431 / CCH 5 / (2023)451 ITR 389 (Delhi.)(HC)

S.40A(2): Expenses or payments not deductible – Excessive or unreasonable Salaries to related parties- Assessing Officer failed to give fair market value to show excessiveness-Invocation fundamentally wrong- Payment allowable.

Held, that the Assessing Officer had erred by not opining as to what, according to him, was the fair market value of the service, which was being rendered by the related persons, before treating the payments made to them as excessive. The Commissioner (Appeals) allowed the Assessing Officer's mistake to be perpetrated. Both of them had fundamentally erred in not appreciating the mandate of section 40A (2)(b) of the Act .Payment allowable . (AY. 2014-15)

ACIT v. Praveen Sushil Kanda (2022)98 ITR 345 (Raipur)(Trib)

S. 40A(2): Expenses or payments not deductible – Excessive or unreasonable – Rate of 18 percent – Bank charges at 15 percent -Disallowance is not justified [S. 40A(2)(a)]

Held that the Assessing Officerwas not justified in making disallowance under section 40A(2)(a) in respect of interest paid by the assessee @ 18 per cent pa on the unsecured loans raised from related parties on the basis that the assessee could have procured loans from the bank @ 15 per cent The interest paid by the assessed@18 per cent has been accepted by the Department in the earlier year, the disallowance was deleted . (AY.2014 -15)

Brothers R. Kothari v. Dy. CIT (2022) 217 TTJ 17(UO) (Raipur)(Trib)

S. 40A(2): Expenses or payments not deductible – Excessive or unreasonable - Rent to partners - Business activities carried out from the said premises— Order of CIT(A) deleting the addition was affirmed . [S.37(1), 40A(2)(b)]

Held, that the assessee had taken on rent the premises for its business need and all its commercial activities were carried out from that rental premises. Hence, the disallowance made by the Assessing Officer had been rightly reversed by the CIT (A).(AY. 2009 -10, 2011-12)

ACIT v. Rohit and Co. (2022)97 ITR 223 (Kol) (Trib)

S. 40A(2): Expenses or payments not deductible – Excessive or unreasonable -Interest – Higher rate – Business urgency – allowable as deduction [S. 37(1), 40A(2)(b)]

The Tribunal held, that the CIT (A) rightly allowed the assessee's interest expenditure as the loan taken was a short terms loan. Proper disclosure regarding the nature, payments and tenure of the loans were reflected in the Tax Audit Report.).(AY. 2009 -10, 2011-12)

ACIT v. Rohit and Co. (2022)97 ITR 223 (Kol.) (Trib)

S. 40A(2): Expenses or payments not deductible – Excessive or unreasonable – Commission – Allowable as deduction .

The Tribunal held that the department failed to provide any evidence that the payments of commission were not genuine or excessive. Therefore, the CIT (A) had rightly deleted the addition. (AY. 2009 -10, 2011-12)

ACIT v. Rohit and Co. (2022)97 ITR 223 (Kol) (Trib

S. 40A (2): Expenses or payments not deductible – Excessive or unreasonable - International Transactions — Deduction of tax at source — External commercial

borrowing from Foreign Company — Assessee Liable to Deduct Tax on Interest Payment — Grossing up tax deducted portion with interest paid and claiming deduction — Contrary to inter-party agreement and law [S. 92C]

The Tribunal held that although the assessee had deducted tax at source on the interest payment, instead of reducing that from the payment made to the associated enterprise, they had grossed up the tax-deducted portion to the interest paid to the associated enterprises and claimed it as a deduction. Such a procedure was contrary to the agreement between the parties as well as to the provisions of the law. Therefore, there was no error in the reasons given by the Transfer Pricing Officer or the Dispute Resolution Panel to disallow the grossed-up portion of the tax deduction on interest paid to the associated enterprises on external commercial borrowings in terms of section 40A (2). (AY. 2012-13, 2013-14)

Lite-On Mobile India Pvt. Ltd. v. Dy. CIT (2022)96 ITR 352 (Chennai) (Trib)

S. 40A(2): Expenses or payments not deductible-Excessive or unreasonable-Addition was deleted by CIT(A) in earlier year-Revenue has not challenged the order of earlier year-Addition was deleted [S. 254(1)

Held that on identical facts the remuneration paid to directors was deleted by the CIT(A). No change of facts for the relevant year. Addition was deleted. (AY. 2014-15)
Niche Health Options (P.) Ltd. v. (2022) 196 ITD 6 (Mum) (Trib.)

S. 40A(2): Expenses or payments not deductible-Excessive or unreasonable-Civil contractor-Labour charges paid to son of partner-Genuineness and reasonableness was not doubted-50% disallowance on ad-hoc basis is deleted.[S. 37(1)]

Held that when the genuineness and reasonableness was not doubted in respect of labour charges paid to son, 50% disallowance on ad-hoc basis is deleted. (ITA No. 1559/ Ahd/2019 dt 30-3-2022)(AY. 2014-15)

Akshatam Construction LLP v. DCIT (2022) The Chamber's Journal-May-P. 82 (Ahd) (Trib)

S. 40A(2): Expenses or payments not deductible-Excessive or unreasonable-Salary paid to daughter of Director-Disallowance is held to be not justified.
Assessing Officer disallowed claim for deduction of salary paid to daughter of director. On appeal the Tribunal held that the Assessing Officer did not disclose as to how said expenditure was found by him to be either excessive or unreasonable having regard to fair market value of services which were rendered by her for legitimate needs of business of assessee company. Disallowance was set aside. (AY. 2014-15)
Kimaya Impex (P.) Ltd v. ITO (2022) 193 ITD 710 (Mum) (Trib.)

S. 40A(2)(b): Expenses or payments not deductible – Excessive or unreasonable – Salary to directors and daughter -in -law – Not justified in partly disallowing salary payments .
Held that respective persons, to whom payments had been made, had offered receipts as their respective income and those individuals were assessed to tax at maximum tax rates . The Assessing Officer had only compared salary payments made by assessee in year under consideration with that of earlier year to come to conclusion of excessive salary payment and

said conclusion was not based on any material on record as contemplated under section 40A(2)(b) of the Act . The Assessing Officer was not justified in partly disallowing salary payments by invoking provisions of section 40A(2)(b) of the Act . (AY. 2015-16)
Balani Infotech (P) Ltd. v. ACIT (2022) 219 TTJ 64 (UO) / (2023) 146 taxmann.com 410 (Delhi) (Trib)

S. 40A (2)(b): Expenses or payments not deductible – Excessive or unreasonable - Remuneration of directors of Private company —Directors paying taxes at maximum rate- Disallowance of payment in excess of 20 Per Cent. of net Profit not sustainable.

The Tribunal held that the Assessing Officer had not carried out any exercise for holding the payment of remuneration to the directors unreasonable or not in consonance with the payment of directors or remuneration. The directors had paid taxes on the remuneration at the maximum marginal rate, and there was no revenue loss to the Department. In view thereof, in the absence of any findings by the Assessing Officer that the directors' remuneration was excessive and unreasonable, the orders of lower authorities were to be reversed. (AY. 2012-13)

Carmel Softech Pvt. Ltd. v. ITO (2022)96 ITR 34 (SN) (Chennai) (Trib)

S. 40A(3) :Expenses or payments not deductible-Cash payments exceeding prescribed limits-Raw hides and skins purchased from trader-Disallowance is not valid. [S. 133(6), R. 6DD(e)]

The Tribunal held that merely because some of the notices were returned with such endorsement it could not be inferred that the purchases were not made from producers and affirmed the order of the Commissioner (Appeals). On appeal dismissing the appeal, held that the Tribunal was correct in holding that the assessee was entitled to deduction in respect of raw hide purchases made in cash exceeding Rs. 20,000 under section 40A(3) and that the purchases were made from the persons covered by the provisions of rule 6DD(e). The payments were made to the suppliers of the hides and skins and considering the nature of the trade, the Commissioner (Appeals) and the Tribunal had accepted the contention of the assessee. The Tribunal was right in affirming the order passed by the Commissioner (Appeals). There was no ground to interfere with the order of the Tribunal.(AY.2010-11)

PCIT v. Standard Leather Pvt. Ltd. (2022)442 ITR 177 / 287 Taxman 31 (Cal) (HC)

S. 40A(3) :Expenses or payments not deductible-Cash payments exceeding prescribed limits-Fish or fish products-Order of Tribunal is affirmed [R. 6DD(f)(iii)]
Dismissing the appeal the Court held that that the Commissioner (Appeals) considered the legal issue and found that, what was purchased was undoubtedly a fish or fish product, which would fall within the scope of rule 6DD(f)(iii) and if it were so, no disallowance under clause (a) of sub-section (3) of section 40A shall be made and no payment shall be deemed to be the profits and gains of business or profession under clause (b) of sub-section (3) of section 40A.(AY.2002-03)

CIT v. Ayshwarya Sea Food Pvt. Ltd. (2022)441 ITR 171 (Mad)(HC)

S. 40A(3) :Expenses or payments not deductible-Cash payments exceeding prescribed limits-Agricultural land-Seller insisting cash payment-Affidavit by assessee-Disallowance is held to be not justified.

Allowing the appeal the Court held that since the affidavits filed by assessee during assessment proceeding, which were not rebutted by revenue, cash payments made as per insistence of the seller no disallowance can be made**.** (AY. 2000-01)

Sangeeta Verma (Smt) v. CIT (2022) 284 Taxman 303 (All.)(HC)

S. 40A(3) :Expenses or payments not deductible - Cash payments exceeding prescribed limits -Agricultural produce — Payments for purchases of sugarcane- Not disallowable . [R. 6DD(e)

Held that in the light of specific exception provided under rule 6DD(e) in respect of agricultural produce, since the assessee had made purchases of sugarcane, which was essentially an agricultural produce, coupled with the fact that Department had earlier accepted this claim of the assessee. Order of CIT (A) is affirmed .(AY.2014-15)

Dy. CIT v. Laxmipathi Balaji Sugar and Distilleries P. Ltd. (2022)100 ITR 58 (SN)(Delhi) (Trib)

S. 40A(3) :Expenses or payments not deductible - Cash payments exceeding prescribed limits – Land dealing – Stock in trade – Cash payment was not claimed as expenditure – Disallowance is not justified [R.6DD]

Assessee-company was engaged in business of land dealing and development . During relevant assessment year, assessee purchased certain lands for which cash payment was made which exceeded Rs. 20,000 Assessing Officer made disallowance under section 40A(3). Since the assessee treated said lands as stock-in-trade and no deduction was claimed while computing business income no disallowance could be made . (AY. 2012-13)

Vikrant Happy Homes (P) Ltd. v. Dy. CIT (2022) 218 TTJ 1 (UO) / 138 taxmann.com 559 (Pune) (Trib)

S. 40A (3): Expenses or payments not deductible - Cash payments exceeding prescribed limits - Expenditure not debited to profit and loss account- Disallowance cannot be made .

The Tribunal that the provisions of S. 40A (3) does not apply. It was held that if the expenditure had not been debited to the profit and loss account but was reimbursed by another company, there was no claim made by the assessee to deduction of expenditure as none of these expenses had been entered into the profit and loss account, then the provisions of section 40A (3) did not apply thereto. (AY.2006-07, 2007-08)

Rainbow Promoters (P.) Ltd. v. ACIT (2022)95 ITR 232 (Delhi) Trib)

S. 40A(3) :Expenses or payments not deductible - Cash payments exceeding prescribed limits-Most of payments made on Saturday/Sunday – Payments covered u/r. 6DD – Outside the scope of section 40A(3) [R. 6DD]

The Tribunal held that most of the payments were made on Saturday/Sunday in a village or town which on the date of said payments was not served by any bank. Said payments are covered under r. 6DD and the same are outside the scope of provisions of s. 40A(3). As

regards payment made for purchase of river sand, since the processing of river sand is without aid of power and such industry is in the nature of cottage industry, payment made for procurement of river sand comes under cl. (f) of r. 6DD and thus, same cannot be disallowed under s. 40A(3). All the remaining cash payment were made to the traders which are supported by necessary evidences. Further, such payments have been made at the instances of traders, that to in an emergency situation which compelled the assessee to make payments in cash. Said payments cannot be disallowed under s. 40A(3). Hence, the AO was directed to delete the disallowance of all payments made by the assessee for purchase of materials in excess of prescribed limit provided under s. 40A(3). (AY. 2009-10 to 2012-13 & 2013-14)
Popular Foundations (P) Ltd. v. ACIT (2022) 209 DTR 18 / 215 TTJ 260(Chennai)(Trib)

S. 40A(3) :Expenses or payments not deductible-Cash payments exceeding prescribed limits-Wrongly shown by tax auditor in the report-Expenditure was not claimed as deduction-Addition is not valid. [S. 28(i)]
Assessing Officer based on tax auditor's report made addition of certain amount to income of assessee on account of cash receipts and payments over Rs. 20,000.Held that Tax auditor reported items of cash receipt and payment shown under column of loan and deposits accepted during year and not under column for disallowances to be made under section 40A(3) of the Act. These transactions were in nature of amounts taken/paid in cash from sister/associate concerns, and assessee had not claimed said amount as business expenses in its profit and loss account. Considering the nature of transactions addition made by Assessing Officer and sustained by Commissioner (Appeals) was deleted. (AY. 2012-13)
DCIT v. AYG Realty Ltd. (2022) 197 ITD 448 (Mum) (Trib.)

S. 40A(3) :Expenses or payments not deductible-Cash payments exceeding prescribed limits-Civil contractor-Material purchase and labour payments-Payment in excess of Rs. 20,000-Failure to prove exception-Disallowance is justified [S. 263, R. 6DD]

Held that the assessee could not demonstrate that assessee's case fell into exceptions as contained in rule 6DD. Therefore, disallowance under section 40A(3) with respect to material consumed and labour payments were confirmed. (AY. 2012-13)
ACIT v. Bajrang Bahadur Singh. (2022) 196 ITD 686/ 220 TTJ 19 (UO) (Varanasi) (Trib)

S. 40A(3) :Expenses or payments not deductible-Cash payments exceeding prescribed limits-Stock in trade-Insistence of seller-Matter remanded for verification. [R. 6DD(g), 6DD(j]

Assessee was in the business of hardware and electrical goods. During the year, the assessee made several cash payments in a day exceeding Rs. 20,000 for buying Stock-in-trade from two companies. The Assessing Officer made disallowance under section 40A(3) in respect of said payments on the ground that the assessee could not produce any compelling reasons for making said payments in cash. Assessee contended that suppliers insisted on payments in cash. In the case of one of the parties, payment was directly deposited in the bank account of the supplier. Matter was remanded back to the AO for verification. (AY. 2014-15)
T C Srinivasa. v. ITO (2022) 195 ITD 127 (Bang) (Trib.)

S. 40A(3) :Expenses or payments not deductible-Cash payments exceeding prescribed limits –Payments to contractors-Transactions were genuine and parties identifiable-Disallowance is upheld [R. 6DD (k)]

Held that though the payments to contractors are genuine and parties identifiable, disallowance is upheld. (AY. 2010-11)
Shree Buildcon & Associates (2022) 195 ITD 671 (Pune)(Trib)

S. 40A(3) :Expenses or payments not deductible-Cash payments exceeding prescribed limits-Payment was made by way of legal tender i.e. Indian currency, said payments were covered by exception contemplated in rule 6DD(b)-Disallowance is not valid [R.6DD(b)] and, therefore, same could not be disallowed under section 40A(3)
Assessee purchased wine from two entities by making cash payments exceeding Rs. 20,000. Assessing Officer disallowed said payments under section 40A(3). CIT(A) deleted the disallowances. On appeal by Revenue the Tribunal held that both the undertakings were State Government companies wherein 100 per cent shareholding was held by State Government and there was an existence of deep and pervasive control of State Government. Since payments in question were made by assessee to State Government entities by way of legal tender, same were covered by exception contemplated in rule 6DD(b) order of CIT(A) is affirmed. (AY. 2014-15)
DCIT v. Vinod Arora. (2022) 194 ITD 605 (Amritsar) (Trib.)

S. 40A(3) :Expenses or payments not deductible-Cash payments exceeding prescribed limits-Land purchase-Real estate business-Expenditure added to closing work in progress-No disallowance can be made.[S. 145, R.6DD .]

The assessee engaged in the business of real estate purchased certain portion of lands in cash which was added to work in progress. The AO disallowed the said payment by invoking provision of section 40A(3) of the Act. On appeal CIT(A) affirmed the view of the AO. On appeal to the Tribunal the Tribunal held that the expenditure incurred was not claimed as deduction hence disallowance was deleted.(AY. 2012-13)

Vikrant Happy Homes Pvt Ltd v. DCIT (2022) 138 taxmann.com 559 (Pune) (Trib)

S. 40A(9) : Expenses or payments not deductible - Bonus to employees - Employees welfare fund —Voluntary retirement Scheme —Allowable as deduction . [10(10C) 37(1)]

Held that once payment made to employees were not exempt under section 10(10C) of the Act, they partook of the nature of expenses incurred for the purpose of business and thus, the assessee could claim deduction under section 37(1) of the Act. However, the Assessing Officer was to verify whether the employees did not avail of the benefit of exemption under section 10(10C) of the Act. If the Assessing Officer found that the employees had not availed of the benefit of exemption under section 10(10C) of the Act, he was to allow the deduction as claimed by the assessee towards compensation paid to employees under section 37(1) of the Act. *(* AY.2008-09 to 2010-11)
Rane Engine Valves Ltd. v .Dy. CIT (2022)95 ITR 5 (SN)(Chennai)(Trib)

S. 41(1) : Profits chargeable to tax-Remission or cessation of trading liability-Turnover tax-Liberty to assessee to prove that no deduction claimed for earlier assessment years-Direction to Assessing Officer to rectify assessment order.[S. 43B, Art, 136]

The Court held that it would be open to the assessee to produce evidence that no deduction had been claimed of turnover tax on payment basis under section 43B for the assessment years 1990-91, 1991-92 and 1992-93 as stated in the assessment order and if this was found to be a mistake, the Assessing Officer was to exclude the amount from assessment by rectifying the order. Dismissing the appeal the Court held that an order of remand to the High Court was required, but that it would not pass such a remit order, as the issue had been correctly decided, and the remand would only entail extra expenditure on the part of the assessee and would not be in the interests of justice.(AY.1995-96)

Ishwardas Sons v. CIT (2022)447 ITR 755/ 220 DTR 94 /329 CTR 689/ 289 Taxman 620 (SC)

S. 41(1) : Profits chargeable to tax-Remission or cessation of trading liability –Method of accounting-Interest subsidy-Taxable on actual remission or cessation of liability. [S. 145]

Dismissing the appeal of the Revenue the Court held that Tribunal rightly held that interest subsidy should be deemed as income under section 41(1) and though accrued in assessment year 2001-02 will be charged in assessment year 2002-03. (AY. 2001-02)
CIT v. Vivada Inland Waterways Ltd. (2022) 288 Taxman 99 (Cal)(HC)

S. 41(1) : Profits chargeable to tax-Remission or cessation of trading liability--Debts barred by limitation do not cease to be debts-Not to be treated as income [S. 28(i), Limitation Act,1963]

Dismissing the appeal of the Revenue the Court held that debts barred by limitation do not cease to be debts. Not to be treated as income. referred, CIT v. Indian Rayon and Industries Ltd (2011) 336 ITR 479(Bom)(HC) (AY. 2011-12)

PCIT v. Batliboi Environmental Engineering Ltd. (2022)446 ITR 238 (Bom) (HC)

S. 41(1) : Profits chargeable to tax-Remission or cessation of trading liability-Matter remanded to the Assessing Officer-No question of law [S. 158BC, 158BD, 254(1), 260A]

Tribunal remanded the issue of addition made u/s 41(1) of the Act to the file of the Assessing Officer. On appeal the High court held that the Assessing Officer had computed the undisclosed income and had made additions accordingly for the block period. The assessee ought to have rebutted the assessment by giving cogent and reliable evidence, which it failed to do. Therefore, the assessee could not contend that based on the books of account furnished by it the Assessing Officer had made the additions. Further, the liabilities were shown in the books of account as outstanding credits and they were not written back by the assessee and hence, the Tribunal had rightly restored the addition made by the Assessing Officer as undisclosed income under section 41(1). No question of law arose.(AY.1997-98 to 2002-03)

Keld Ellentoft India Pvt. Ltd. v. ACIT (2022)441 ITR 506 / 212 DTR 186/ 326 CTR 660 (Mad)(HC)

S. 41(1) : Profits chargeable to tax - Remission or cessation of trading liability -Capital or revenue- Assets and liabilities of subsidiary absorbed by holding company- Written off – Advance for purchase of tools – Not assessable as business income . [S. 28(iv)]

The assessee showed certain amount as an exceptional item of waiver of unsecured loan liability. The notes to accounts stated that "during the year, the company has waived the loan liability which was classified under "unsecured loans" since it was no longer required to be paid . The Assessing Officer treated the waiver of loan amounting as income of the year under section 28(iv) read with section 41(1) of the Act and brought it to tax. The Commissioner (Appeals) allowed the assessee's appeal. On appeal dismissing the appeal of the Revenue the Tribunal held that the amount written off was the amount advanced for purchase of tools cannot be assessed as business income . (AY. 2005-06)

Dy.CIT v. Cooper Standard Automotive India P. Ltd. (2022) 98 ITR 59 (SN) (Chennai) (Trib)

S. 41(1) : Profits chargeable to tax - Remission or cessation of trading liability – Loans outstanding in the balance sheet – Addition cannot be made .

Dismissing the appeal of the Revenue the Tribunal held that in order to attract the provisions of section 41(1) of the Act , there should have been an irrevocable cessation of liability without any possibility of the same been revived , which has not so been established by the Revenue . (AY. 2009 -10)

G.S. Entertainment v .ACIT(2022) 220 TTJ 885/ 220 DTR 49 (Mum)(Trib)

S. 41(1) : Profits chargeable to tax - Remission or cessation of trading liability – Waiver of interest –Estimate made - No proof for waiver of interest – Deletion of addition is affirmed .

Held that the Assessing Officer has wrongly assumed that Banker has waived the interest . The assessee has only shown as probable liability . Order of CIT(A) deleting the addition was affirmed .

Dy.CIT v. Hyderabad Educational Institutions (P) Ltd (2022) 218 TTJ 487 (Hyd)(Trib)

S. 41(1) : Profits chargeable to tax - Remission or cessation of trading liability - Outstanding sundry creditors shown in the books-Addition cannot be made .

Held that in the absence of any material to establish that the assessee has obtained any benefit in respect of the liability of sundry creditors, it cannot be assumed that there is remission or cessation of liability in the relevant year, when the assessee has not written back the liability in its books of accounts. Addition was deleted . (AY. 2009-10)

G.S. Entertainment v. ACIT (2022) 220 DTR 49 / 220 TTJ 885 (Mum)(Trib)

S. 41(1) : Profits chargeable to tax - Remission or cessation of trading liability - Profits on buy-back of foreign currency convertible bonds —Furnishing certificate of Chartered Accountant- No part of proceeds utilised towards non-capital expenditure – Addition is not justified . [S. 28(iv)]

Held that the provisions of section 41(1) required that the amount in question which had ceased to be the liability should have been debited as expenditure in the normal course of business and should be in the nature of trading receipt. Since the assessee had raised the loans for the purposes of business (specifically capital expenditure as required by the RBI guidelines) and had not been claimed as an expense, the provisions of section 41(1) do not come into play. Thus, the Commissioner (Appeals) was right in holding that the receipts on buy-back of foreign currency convertible bonds would not fall under the purview of section 41(1) of the Act .Relied on CIT v. Mahindra and Mahindra Ltd (2018)404 ITR 1 (SC) (AY. 2009-10)

Nahar Industrial Enterprises Ltd. v. Dy. CIT (2022) 99 ITR 562 (Chd) (Trib)

S. 41(1) : Profits chargeable to tax - Remission or cessation of trading liability - Outstanding liability – Addition is not justified .

During year the assessee showed an outstanding liability in its books of account .Assessing Officer held that assessee had failed to substantiate existence of such outstanding liability, thus, he treated same as ceased liability under section 41(1) and added it to income . Tribunal held that Assessing Officer had though pointed out that there was a cessation of liability but had failed to place on record any material which would irrefutably evidence that such cessation had taken place during relevant assessment year and as a result thereof, consequential benefit by way of remission or cessation was obtained by assessee during year itself .Addition was deleted . (AY. 2013-14)

ACIT v. Milroc Good Earth Property & Development LLP (2022) 217 TTJ 52 (UO)/ 142 taxmann.com 149 (Panaji)(Trib)

S. 41(1): Profits chargeable to tax - Remission or cessation of trading liability – Transhipment charges- Outstanding for three years - Offered to tax in 2011-12- Justified in deleting .[S. 145]

The Tribunal held that there was no infirmity in the order of the Commissioner (Appeals) deleting the addition looking at the consistent accounting policy adopted by the assessee and offering it as income when the three years had elapsed. (AY.2007-08)

ACIT v. United Shippers Ltd. (2022) 97 ITR 94 (Mum) (Trib)

S. 41(1) : Profits chargeable to tax - Remission or cessation of trading liability - Amounts shown as sundry creditors- Deletion of addition is justified . [S. 37(1)]

Held that the assessee had not debited the liabilities to its profit and loss account in any of the earlier years and the question of receiving any benefit, allowance or deduction by the assessee in earlier years, had not been fulfilled. Therefore, the conditions needed for the applicability of section 41(1) had not been fulfilled and the CIT(A) had rightly deleted the additions. (AY.2013-14)

ITO v. Mohinder Pal Singla (2022)97 ITR 587 (Chd) (Trib)

S. 41(1) : Profits chargeable to tax - Remission or cessation of trading liability -Pre-payment of liability under Sales Tax Defferal Scheme- Deletion of addition is held to be justified .

Following the decisions in CIT v. Sulzer India Limited (2014) 369 ITR 717 (Bom)(HC) CIT v. McDowell & Co Ltd (2014) 369 ITR 684 (Karn) (HC) CIT v. Xylon Holdings (P.) Ltd. [2012] 26 taxmann.com 333/211 Taxman 108 (Bom.) (Mag.). the order of the CIT(A) is affirmed .(AY. 2011 -12)

Dy. CIT v. Atlas Copco (India) Ltd (No .2) (2022) 96 ITR 566 (Pune)(Trib)

S. 41(1): Profits chargeable to tax - Remission or cessation of trading liability - Provision for gratuity and leave encashment written back — Expenses not allowed in earlier year — Amount write back cannot be taxed.

The Tribunal held that in the AY 2011-12, the assessee had claimed expenditure in relation to gratuity and leave encashment which had been disallowed in the assessment order. It was this sum, which was written back in the profit and loss account of the relevant year, as these expenses were no longer payable. Since the expense was never allowed as deduction in the year of debit, i. e., AY 2011-12, the corresponding write back also could not be taxed, having regard to the extant provisions of section 41(1) of the Act. The Assessing Officer in the remand report having accepted the assessee's contention, the action of the Commissioner (Appeals) sending the issue to the Assessing Officer for further verification was unwarranted. (AY. 2014-15)

Welkin Telecom Infra (P.) Ltd. v. Dy. CIT (2022)96 ITR 475 (Kol)(Trib)

S. 41(1) : Profits chargeable to tax-Remission or cessation of trading liability-Hived off its hire purchase and leasing business to a special purpose vehicle (SPV)-Assigned corresponding receivables together with bank liabilities to SPV at book-Liable to repay-Not chargeable to tax-Bank claimed as bad debt-No outstanding due from Bank in the books of account-Addition cannot be made [S. 145]

Assessee hived off its hire purchase and leasing business to a special purpose vehicle (SPV) and assigned corresponding receivables together with connected bank liabilities to SPV at book value under tripartite agreement which was amongst assessee, SPV and consortium of twelve banks who had advanced finances to assessee. Total receivables as per accounts were Rs. 93.45 crores; whereas bank liabilities were Rs. 89.86 crores. Assessing Officer held that bank dues of Rs. 89.05 crores were crystalized at Rs. 43 crores and held that there was remission of liabilities to extent of Rs. 46.05 crores, i.e., Rs. 89.05 crores minus Rs. 43 crores and added said amount to income of assessee by applying provisions of section 41(1). Held that though bank liabilities were crystalized at Rs. 43 crores, yet SVP was obliged to repay any amount received by it over and above Rs. 43 crores and, therefore, it would not be correct to say that bank liabilities were ultimately settled at Rs. 43 crores and balance amount was waived off therefore provisions of section 41(1) were not applicable to the facts of the appellant. Bank claimed it as bad debts, since there was no outstanding balance of bank in books of assessee in relevant assessment year, impugned addition deserved to be deleted. (AY. 2009-10)

India Cements Capital Ltd. v. ACIT (2022) 196 ITD 127 / 220 TTJ 990/ (2023) 221 DTR 28 (Chennai) (Trib.)

Dy .CIT v. Unique Receivable Management (P) Ltd v. ACIT (2022) 196 ITD 127 / 220 TTJ 990/ (2023) 221 DTR 28 (Chennai) (Trib.)

S. 41(1) : Profits chargeable to tax-Remission or cessation of trading liability-Sundry creditors-Burden is on Revenue-Order of CIT(A) is affirmed.

Held that onus is cast upon revenue to establish that assessee had during year under consideration obtained some benefit in respect of such trading liability by way of remission or cessation thereof. Order of CIT(A) deleting the addition is affirmed. (AY. 2009-10)

Infrastructure Logistics (P.) Ltd. v. JCIT *(*2022) 196 ITD 153 (Panaji) (Trib.)

S. 41(1) : Profits chargeable to tax-Remission or cessation of trading liability-Refund of Excise duty, subject to condition is liable to tax during the year of receipt.

Assessee company received refund of excise duty in pursuance of Supreme Court order, subject to condition that assessee should furnish bank guarantee till the main appeals before the apex court are finally disposed of. On Appeal the Tribunal held that the condition of furnishing a bank guarantee will not make any difference and refund of excise duty is liable to tax during the year under consideration. (AY.2004-05 & 2005-2006)

Frick India Ltd.v. DCIT (2022) 216 TTJ 146 (Delhi)(Trib.)

S. 41(1) : Profits chargeable to tax-Remission or cessation of trading liability-Merely because the liability is outstanding in the books for long period of time when there has been no supervening development nullifying the liability to pay between the parties-such liability cannot cease to exist.

Certain sum payable to two of its creditors which was reflected in its books of accounts. The AO held that the assessee did not have transactions with these creditors for many years and they were still being reflected in the books of the assessee therefore the AO held that such liability ceased to exist and made addition to the income of the assessee under section S. 41(1) of the Act.. The CIT (A) held that there was no supervening development over the

initial relationship between the parties nullifying the liability to pay. The AO has also not established that the parties had unilaterally or bilaterally treated the said transaction to be nullity, therefore, the AO had no basis to hold that liability has ceased to exist. The ITAT upheld the order of the CIT(A). (AY. 2016-17)

Dy.CIT v. BPL Ltd. (2022) 94 ITR 66 (SN) (Bang) (Trib.)

S. 41(2) : Profits chargeable to tax-Balancing charge-Asset continued to hold-losses arising from impairment in the value of assets-Impairment in value of the asset was calculated on registered valuer report-Provision is not applicable-Loss not allowable as a deduction. [S. 41(1)]

Assessee had charged a sum of Rs. 7.78 lakhs to the profit and loss account on account of provisions for losses arising from impairment in value of assets. Assessee submitted that after getting these assets valued from Government Approved Valuer, losses towards impairment of assets were claimed in the profit and loss account in accordance with Accounting standard AS-28 issued by ICAI. According to Assessing Officer, said the loss was not allowable as there was no provision in the Act to allow any loss on account of impairment in the value of fixed assets unless the same were destroyed, discarded or sold and thus the claim of the assessee was rejected by Assessing Officer and corresponding addition was made to income. On appeal, Commissioner(Appeals) allowed the claim of the assessee by referring to AS-28. On appeal, the Tribunal held that section 41(2) deals with charging of income in the year in which it is sold, discarded, demolished or destroyed, but not case where the assessee continues to hold fixed assets and loss or impairment in value of the asset is calculated on registered valuer report. The provision of section 41(2) is not applicable. (AY. 2011-12)

ACIT v. Uniworth Textiles Ltd. (2022) 195 ITD 675 (Kol) (Trib.)

S. 41(4) : Profits chargeable to tax-Bad debt-Bad debts recovered by the amalgamated company-Liable to tax [S. 36(1)(vi 41(1)]

Dismissing the appeal of the assessee the Court held that, section 41(1) of the Act has to be considered as a complete code by itself. Section 41(1) cannot be read in isolation with section 41(4). The assessment completed under section 41(1) is the same as the assessment contemplated under section 41(4). Therefore, merely because there is no corresponding amendment in sub-clause (4) it would not mean that the provisions of section 41(1) will not apply. The recovery of the debt is the right transferred along with the numerous other rights comprising of the subject of the transfer. Accordingly, the bad debt recovered by the assessee which was written off by the amalgamating company, which got amalgamated is liable to be taxed in the hands of the assessee.(T.C.A Nos. 272& 275 of 2022 dt. 26-9-2022) (AY. 2004-05, 2005-06)

Sundaram Finance Ltd v. JCIT (2022) 145 taxmann.com 329 (Mad)(HC)

S. 43(1) : Actual cost-Depreciation-Subsidy-Subsidy received from Government-Proviso and Explanation 10 to Section 43(1) by Finance (No. 2) Act, 1998-Not retrospective in operation-Matter remanded for verification. [S. 32]

Allowing the appeal the Court held that Explanation 10 to section 43 was not retrospective in operation. Even otherwise the financial assistance received by the assessee from the Government under the Scheme was not asset specific. Therefore, Explanation 10 per se was not attracted to the case of the assessee. However, by application of the proviso to Explanation 10 to section 43(1) of the Act the actual cost had to be apportioned and reduced from the cost of the assets of the assessee for the purpose of computing the depreciation. Therefore, the order of assessment had to be set aside to the extent that the subsidy was apportioned against all the assets, viz., building, furniture and plant and machinery, computer software. The adjustment at best could be against the assets which received the addition from financial assistance received under the Scheme. Therefore, in so far as the AY 2009-10 was concerned, the inclusion of the financial assistance received up to March 31, 1999 was incorrect. Therefore by excluding the assistance received up to March 31, 1999 the balance financial assistance, i. e., Rs. 1,51,00,000 received needed to be reworked. Matter remitted to assessing authority. To the limited extent of financial assistance received after April 1, 1999, the assessee was given liberty to file a statement on utilisation of assistance for capacity building of assets in the subject AYs.(AY. 2008-09, 2009-10)

Kinfra Export Promotion Industrial Parks Ltd. v.JCIT (2022) 444 ITR 608/ 215 DTR 233/ 287 Taxman 353 / 327 CTR 198 (Ker)(HC)

S. 43(1) : Actual cost-Subsidy for industrialization of backward state-Capital Nature-Not to be reduced from the asset cost. [Expln. 10].

Held, that if the purpose of the subsidy was industrialisation of the backward State and was of capital nature, such subsidy was not required to be reduced from the cost of the asset under Explanation 10 to section 43(1) of the Act. The order of the CIT (A) justified. (AY. 2003-04, 2006 -07 to 2008 -09)

Jindal Steel and Power Ltd v. Add. CIT (2022)97 ITR 516 (Delhi) (Trib)

S. 43(5) : Speculative transaction-Derivatives-Amendment not retrospective-Entitled to set off of loss incurred in transactions of derivatives against business-As amended by Finance Act, 2005 With Effect From 1-4-2006 [S.28(1), 43(5)(d), 70, 73]

The assessee collected toll fees and also carried on business of shares and derivatives. It claimed set off in respect of the loss suffered by it in the transaction in derivatives against the income from its infrastructure business under the head of income from business or profession under section 28. The Assessing Officer disallowed the claim. The Commissioner (Appeals) held that the assessee was not entitled to claim set off against the income from a non-speculative business. The Tribunal confirmed his order. On appeal allowing the appeal the Court held that the Tribunal could not have confirmed any addition on transaction in derivatives on recognised stock exchange as defined in section 43(5)(d) with reference to the Explanation given to section 73 which was applicable to speculative transaction. The Assessing Officer did not consider the effect of insertion of the proviso to section 43(5) in his order. The Commissioner (Appeals) had considered the Explanation to section 73 and had erroneously observed that income from share trading was to be regarded as speculative income. However, the set-off being speculative loss could not be set off against the regular business income assessed by the Assessing Officer as claimed by the assessee. The Commissioner (Appeals) did not consider the contention of the assessee that in view of the amended provisions of section 43(5)(d), the trading of shares in derivatives was to be

assessed as the regular business and not speculative business and therefore, the loss if any in transactions in derivatives was required to be set off against the other heads of income. The assessee had not claimed any set-off of the loss suffered in the transactions in shares where delivery was actually effected but had claimed set-off of the loss suffered in respect of transactions in derivatives in view of the amendment in law with effect from April 1, 2006. None of the authorities below had considered and dealt with the effect of insertion of proviso (d) to section 43(5) by the 2005 Act with effect from April 1, 2006 the AY in question being 2009-10, i. e., after insertion of clause (d) to the proviso to section 43(5). Transactions in derivatives carried out by the assessee after April 1, 2006 therefore, were not speculative transactions. Referred Snowtex Investment Ltd. v. P CIT (2019) 414 ITR 227 (SC). Court held that Tribunal was not justified in confirming any addition on transactions in derivatives on a recognised stock exchange as defined under section 43(5)(d) with reference to the Explanation given to section 73 which was applicable to speculative transactions. By virtue of insertion of clause (d) to the proviso to section 43(5) the transactions in respect of the trading in derivatives would not be speculative transactions. Therefore, the assessee was entitled to claim set off of the loss suffered by it in the transactions in derivatives against its income from infrastructure business under section 70.(AY. 2009-10)

Souvenir Developers (I) Pvt. Ltd. v. UOI (2022) 444 ITR 167/ 326 CTR 697 / 214 DTR 81 / 287 Taxman 338 (Bom)(HC)

S. 43(5) : Speculative transaction - Derivative trading - **Manufacturing of yarn- Forex derivative transactions through its bankers to hedge its foreign currency risk- Not speculative -Allowable as business loss. [S. 28(i)), 37(i) .]**

As per RBI guidelines user can undertake derivative transaction to hedge, specially reduce or extinguish an existing identified risk on an ongoing basis during life of derivative transactions or for transformation of risk exposure as specially permitted by RBI . Assessee engaged in business of manufacturing of yarn, processed fabrics, sugar and export of cotton yarn, entered into forex derivative transactions through its bankers to hedge its foreign currency risk, business loss arising out of foreign exchange fluctuation could not be termed as speculative under section 43(5) of the Act .Loss allowable as business loss .(AY. 2011 - 12

ACIT v. Nahar Industrial Enterprises Ltd. (2022) 219 DTR 73 / 219 TTJ 544 / 99 ITR 562 /142 taxmann.com 52 (Chd)(Trib)

ACIT v. Nahar Spinning Mills Ltd (2022) 219 DTR 73 / 219 TTJ 544/ / 99 ITR 562 /142 taxmann.com 52 (Chd)(Trib)

ACIT v. Oswal Woollen Mills Ltd. (2022) 219 DTR 73/ 219 TTJ 544 /99 ITR 562 / 142 taxmann.com 52 (Chd)(Trib)

S. 43(5): Speculative transaction – Raising funds through foreign currency convertible bonds for manufacturing- Entering into hedging transaction to cover expected loss from fluctuation of foreign currency- Commercial expediency- Transaction incidental to business- Loss allowable.[S.37(1)]

The assessee as a matter of commercial expediency because of unexpected fluctuations in foreign exchange currency was compelled to settle the derivative loss during the year under consideration and claimed the loss as business expenditure. The intention of the assessee was to hedge the transaction for securing business loss. Such transactions were recognized as per law in India. Therefore, the transaction entered into by the assessee was not speculative transaction. It was incidental to the assessee's business and hence allowable. (AY. 2011-12).

Oswal Woollen Mills Ltd. v. Add. CIT (2022)98 ITR 521 (Chd) (Trib)

S. 43(5) : Speculative transaction-Derivative transactions-Futures and options transactions in recognized stock exchange through SEBI registered share broker-Loss allowable as business loss.[S. 43(5)(d)), 73]

During relevant assessment year, assessee entered into derivative transactions comprising of futures and options in addition to entering into trading transactions in equity shares. Assessee incurred loss on sale of futures, options and shares which was claimed as business loss. Assessing Officer sought to treat said loss as speculation loss by applying provisions of Explanation to section 73. Held that since substantial income of assessee comprised of income from house property and capital gains, then case of assessee would squarely fall under exception provided in Explanation to section 73. Tribunal also held that the assessee executed transactions in recognized stock exchange through SEBI registered share broker, said transactions would fall under exception provided in definition of speculative transactions in terms of section 43(5)(d) and loss incurred on the same was to be treated as regular business loss. (AY. 2011-12)
DCIT v. Blue Berry Trading Co. (P.) Ltd. (2022) 197 ITD 401 (Mum) (Trib.)

S. 43(5) : Speculative transaction-Trading in commodity derivatives-Chargeable to commodities transaction tax-Recognised associations-Cannot be assessed as deemed speculative transactions-loss arising from derivatives can be set off against profit of medical derivatives business of assessee. [70, 73]

The Assessing Officer held that derivative trading in commodities was a kind of speculation in the commodity trading business and loss suffered in derivatives commodity trading could be set off only against speculative income and not against other business income which was confirmed by Commissioner (Appeals). On appeal, the Tribunal held that trading in commodity derivatives was carried out by the assessee on recognised associations and loss shown in confirmations of the broker matched with loss shown in the profit and loss account and thus transactions entered into by the assessee were eligible transactions. Accordingly, the addition made by Assessing Officer, as confirmed by Commissioner (Appeals) was deleted. Loss arising from derivatives can be set off against the profit of the medical derivatives business of assessee. (AY. 2015-16)
Ramesh Verma. v. ACIT (2022) 195 ITD 545 (Lucknow) (Trib.)

S. 43(5) : Speculative transaction-Trading in derivatives-Hedging contract with its bankers to minimize possible fluctuation in foreign currency-Not speculation loss-Allowable as business or business expenditure.[S. 28(i), 37(1)]

Held that the assessee being an exporter of goods having huge receivables from customers entered into a hedging contract with its bankers to minimize possible fluctuation in foreign currency, which resulted in loss, same had rightly been treated as revenue expenditure or business loss and could not be considered as speculative loss within meaning of section 43(5) of the Act. (AY. 2009-10)
DCIT v. Kunnam Granite Works. (2022) 194 ITD 238 (Chennai) (Trib.)

S. 43(6) : Written down value-Demerger-Accounted by both entities on written down value-Entitle to depreciation on written down value [S. 32]

Assessee took over assets and liabilities of a company incorporated by Government of Uttar Pradesh, namely, UPJVNL during its demerger. Assessee claimed depreciation on WDV of such assets. Assessing Officer disallowed same on ground that assessee had taken over assets without corresponding any liability i.e. assets were taken over by UJVNL from UPJVNL free of cost. On appeal the Tribunal held that demerger led to division of assets in a fixed ratio which was duly accounted for by both entities as per WDV and that there was no twice claim of depreciation on said assets by both companies. Entitled to depreciation on WDV of said assets taken over by it. (AY. 2014-15)

ACIT v. Uttaranchal Jal Vidyut Nigam Ltd. (2022) 193 ITD 454 (Dehradun) (Trib.)

S. 43A : Rate of exchange-Foreign currency-Foreign exchange fluctuation gain-Capital receipt-On actual realization to be adjusted against cost of asset.

Held that the unrealised foreign exchange gain was to be treated as capital receipt to be adjusted against cost of asset as and when realised in terms of section 43A of the Act. Followed Apollo Tyres Ltd v. ACIT(2021) 438 ITR 536 (Ker)(HC) (AY.2011-12)

PCIT v. Apollo Tyres Ltd. (No. 3) (2022)447 ITR 431 (Ker)(HC)

S.43B: Deductions on actual payment-Contributions to Employees' Welfare Funds such as Provident Fund and Employees' State Insurance-Employer in Trust-Income of assessee unless paid into fund by due date-Prescribed by enactment governing fund-Interpretation Of Taxing Statutes-Exemption or deduction,Non Obstante Clause-Deduction is available if paid before due date prescribed under respective Acts. [S. 2(24)(x), 36(1)(iv), 36(v), 139(1), Sch. Iv, R. 2(C), Employees' Provident Funds and Miscellaneous Provisions Act, 1952, S. 30, Employees' State Insurance Act, 1948, Employees' Provident Funds Scheme, 1952, Cl. 30, Employees' State Insurance (Central) Regulations, 1950, Regulation, 31.]

Held that the distinction between an employer's contribution which is its primary liability under law in terms of section 36(1)(iv), and its liability to deposit amounts received by it or deducted by it (section 36(1)(va)) is, thus crucial. The former forms part of the employer's income, and the latter retains its character as an income (albeit deemed), by virtue of section 2(24)(x)-unless the conditions spelt out by the Explanation to section 36(1)(va) are satisfied, i. e., depositing such amount received or deducted from the employee on or before the due date. This marked distinction has to be borne while interpreting the obligation of every assessee under section 43B.The non obstante clause has to be understood in the context of the entire provision of section 43B which is to ensure timely payment before the returns are filed, of certain liabilities which are to be borne by the assessee in the form of tax, interest payment and other statutory liability. In the case of these liabilities, what constitutes the due date is defined by the statute. Nevertheless, assessees are given some leeway in that as long as deposits are made beyond the due date, but before the date of filing of the return, the deduction is allowed. That, however, cannot apply in the case of amounts which are held in trust, as in the case of employees' contributions which are deducted from their income. They are not part of the assessee-employer's income, nor are they heads of deduction per se in the form of statutory pay out. They are others' income, monies, only deemed to be income, with the object of ensuring that they are paid within the due date specified in the particular law. They have to be deposited in terms of such welfare enactments. It is upon deposit, in terms of

those enactments and on or before the due dates mandated by such concerned law, that the amount which is otherwise retained, and deemed an income, is treated as a deduction. Thus, it is an essential condition for the deduction that such amounts are deposited on or before the due date. If such interpretation were to be adopted, the non obstante clause under section 43B or anything contained in that provision would not absolve the assessee of its liability to deposit the employee's contribution on or before the due date as a condition for deduction.(AY.2009-10)

Checkmate Services P. Ltd. v. CIT (2022)448 ITR 518/ 218 DTR 218 /329 CTR 1 /(2023) 290 Taxman 19 (SC)
Gujarat State Road Transport Corporation v. CIT (2022)448 ITR 518 (SC)
Merchem Ltd v. CIT (2022)448 ITR 518 (SC)

JMC Projects (I) Ltd v. CIT (2022)448 ITR 518 (SC)

Berger Paints India Ltd v. CIT (2022)448 ITR 518 (SC)

Popular Vehicles and services Pvt Ltd v. CIT (2022)448 ITR 518 (SC)

Kerala State Ware housing Corporation v. CIT (2022)448 ITR 518 (SC)

Harrisons Malayalam Ltd v. CIT (2022)448 ITR 518 (SC)
Kerala State Civil Supplies Corporation Ltd v. ITO (2022)448 ITR 518 (SC)
Max Vigil Securities Pvt Ltd v.ACIT (2022)448 ITR 518 (SC)
Ask me Lab Con Services Pvt Ltd v.ITO(2022)448 ITR 518 (SC)
Suzl on Energy Ltd v.PCIT (2022)448 ITR 518 (SC)
Dhr uvi Pharma Pvt Ltd v.JCIT (2022)448 ITR 518 (SC)
Harrisons Malayalam Ltd v. CIT (2022)449 ITR 391 (SC)

Editorial : CIT v. Alom Extrusions Ltd (2009) 319 ITR 306 (SC) explained and distinguished. Decisions affirmed, CIT v. Gujarat State Road Transport Corporation (2014) 366 ITR 170 (Guj)(HC), CIT v. Merchem Ltd (2015) 378 ITR 443 (Ker)(HC), Popular Vehicles and Services P.Ltd v. CIT(2018) 406 ITR 150(Ker)(HC).Decisions overruled,Esale Teraoka Pvt Ltd v.Dy.CIT (2014) 366 ITR 408 (Karn)(HC), Sagun Foundry Pvt Ltd v.CIT (ITA No. 87 of 2006 dt 21-12-2016 (All)(HC), CIT v. State Bank of Bikaner and Jaipur (2014) 363 ITR 70 (Raj)(HC), CIT v.Udaipur Dugdh Utpadak Sahakari Sangh Ltd (2014) 366 ITR 163 (Raj)(HC), CIT v. AIML Ltd (2010) 321 ITR 508 (Delhi)(HC), CIT v. Nipso Polyfabriks Ltd (2013) 350 ITR 327 (HP)(HC)

S.43B: Deductions on actual payment-Employees' contribution towards provident fund and ESI would qualify for deduction even if paid after due date prescribed but before due date of filing of return.-Amendment is prospective in nature. [S. 36(1)(va)]

Held that employees' contribution towards provident fund and ESI would qualify for deduction even if paid after due date prescribed but before due date of filing of return.Amendment to provisions of section 36(1)(va) read with section 43B vide Finance Act, 2021 by inserting Explanation 2 is prospective in nature and would be applicable only from 1-4-2021 and hence not applicable for assessment year 2012-13 under consideration. (AY. 2012-13)

PCIT v. TV Today Network Ltd. (2022) 289 Taxman 132 / 217 DTR 1/ 328 CTR 204 (Delhi)(HC)
Editorial: Refer, Checkmate Services P. Ltd. v. CIT (2022)448 ITR 518/ 218 DTR 218 /329 CTR 1 (SC)

S.43B: Deductions on actual payment-Mercantile system of accounting-Electricity duty-Agency to collect electricity duty-Provision is not applicable. [S. 43B(a), Electricity Act, 2003]

Dismissing the appeal of the Revenue the Court held that there was no such provision contained in the 1958 Act which showed that the liability to pay the electricity duty was upon the assessee. Rather section 4 of the 1958 Act read with the provisions contained in the Punjab Electricity (Duty) Rules, 1958 made it clear that the assessee was merely an agency assigned with a statutory function to collect electricity duty from the consumers and to pay it to the State Government. Therefore, the provisions of section 43B of the 1961 Act is not applicable. (AY.2008-09)

PCIT v. Dakshin Haryana Bijli Vitran Nigam Ltd. (2022)449 ITR 605 (P&H)(HC)

S.43B: Deductions on actual payment-Electricity duty-Captive power plant (CPP)-Amount deposited as per order of Court-Amount was received by Government-Allowable as deduction-Matter was remanded to Assessing Officer to verify the amounts released to State Government.
Assessee-company had its own captive power plant (CPP) and electricity duty was payable by assessee to Government of Odisha on electricity generated in its CPP. With effect from 10-10-2001, Government of Odisha issued a notification raising electricity duty payable from 12 paisa per unit to 20 paisa per unit. On appeal, Court permitted assessee to continue to pay electricity duty at 12 paisa per unit and assessee deposited differential 8 paisa per unit in a fixed deposit with State Bank of India (SBI) as directed. Further, as directed by Court, assessee transferred Rs. 130 crores from fixed deposits lying in SBI to State Government. Assessee filed its returns for assessment years 2003-04 to 2006-07 and claimed deduction under section 43B towards electricity duty paid including amounts deposited by it with SBI. Revenue disallowed above amount by treating it as a deposit in a designated bank account and not as payment of electricity duty. On appeal the Court held that the amount had not only been parted with by assessee under direction of Court, but had also been received by Government therefore, deduction under section 43B as claimed by assessee could not have been denied. Matter was to be remanded to Assessing Officer to verify the amount released to State Government. (AY. 2006-07)
National Aluminium Co. Ltd. v. CIT (2022) 288 Taxman 36 / 215 DTR 375/ 327 CTR 340 / (2023)451 ITR 383 (Orissa) (HC)

S.43B: Deductions on actual payment-Contribution of employees to provident fund and employees State Insurance-Delay in payment-Not allowable as deduction-Deductions allowable only if contributions paid within due date prescribed in statutes. 2(24)(x), 36(1)(va)]

Held that contribution of employees to provident fund and employees State Insurance, not allowable as deduction if there is delay in payment. Deductions allowable only if contributions paid within due date prescribed in statutes. (AY.1999-2000)
CIT v. Apollo Tyres Ltd. (No. 1) (2022)447 ITR 377 (Ker)(HC)

PCIT v. Apollo Tyres Ltd. (No. 1) (2022)447 ITR 397 (Ker)(HC)
Editorial: Refer, Checkmate Services P. Ltd. v. CIT (2022)448 ITR 518/ 218 DTR 218 /329 CTR 1 (SC)

S.43B: Deductions on actual payment-Electricity-Interim order to deposit electric duty-Money deposited in escrow account-Did not satisfy requirement of amount having been actually paid-Disallowance is held to be justified.[S.43B(1)]
Court passed an interim order directing assessee to continue to pay electricity duty at lesser rate and to deposit differential amount of duty in a separate 'non-lien/escrow' account till disposal of case by Supreme Court. Assessee claimed deductions under section 43B(1) in respect of such amount deposited in non-lien/escrow account. Assessing Officer disallowed on ground that assessee was holding money in said account and same was not 'actually' paid to State Government. Since assessee had deposited sum of money in non lien/escrow account where assessee did not wholly lose control over it and State Government had no access to it until disposal of writ by Supreme Court, such payment would not satisfy requirement of amount having been actually paid for claiming deduction under section 43B(1) of the Act.(AY. 2009-10)
Indian Metal and Ferro Alloys Ltd v. CIT (2022) 287 Taxman 320/ 212 DTR 177/ 326 CTR 161 (Orissa)(HC)

Editorial: SLP of assessee dismissed, Indian Metals and Ferro Alloys Ltd. v. CIT (2022) 289 Taxman 146 (SC)
S.43B: Deductions on actual payment-Property taxes paid-Deductible. [S. 145]
Dismissing the appeal of the Revenue the Court held that the property tax paid allowable as deduction.(AY.2008-09)

CIT v. Bharat Fritz Werner Ltd. (2022)445 ITR 667 / 214 DTR 97/326 CTR 689 (Karn)(HC)

S.43B: Deductions on actual payment-Loan from its two promoters, Government of Tamil Nadu and IL&FS-Public financial institutions-Matter remanded to Assessing Officer. [S. 254(1)]
Tribunal allowed assessee's claim on ground that promoters were not covered by definition of 'public financial institution' as per Explanation 4 to section 43B and thus, provisions of section 43B(d) read with Explanation 3C would not be attracted in assessee's case where interest liability was accrued but not paid. Court held that since Tribunal had not verified whether IL&FS was a public financial institution or not and merely held that both promoters were not covered under definition of 'public financial institutions', orders were to be set aside and matter was to be remanded to Assessing Officer. (AY. 2003-04 to 2011-12)

CIT v. Tamil Nadu Water Investment Co. Ltd. (2022) 446 ITR 546 / 286 Taxman 600 (Mad.)(HC)

S.43B: Deductions on actual payment-Employees' and employers contribution-Paid before due date of filing of return-Allowable as deduction [S. 139(1)]

Dismissing the appeal of the Revenue the Court held that both employees' and employer's contributions are covered under amendment provided by Finance Act, 2003 to section 43B, thus, payments thereof were subject to benefits of section 43B and were to be allowed as deductions. Order of Tribunal affirmed. Followed CIT v. Ghatge Patil Transports Ltd (2014) 368 ITR 749 (Bom) (HC). (AY. 2007-08)

PCIT v. Bramha Corp Hotels and Resorts Ltd(2022) 136 taxmann.com 398(Bom)(HC)

Editorial : SLP filed against order of High Court was to be dismissed as withdrawn. PCIT v. Bramha Corp Hotels and Resorts Ltd. (2022) 286 Taxman 265 (SC)

Editorial: Refer, Checkmate Services P. Ltd. v. CIT (2022)448 ITR 518/ 218 DTR 218 /329 CTR 1 (SC)

S.43B: Deductions on actual payment-Statutory corporation-Obligation of agent to account for and pay amounts collected by him on behalf of principal is purely fiduciary-Disallowance is not valid [Electricity Supply Act, 1948, S. 5]

Amount remained in hands of assessee till date of assessments, Assessing Officer treated said amount as income. On appeal High court held that liability to pay and corresponding authority of State to collect tax (flowing from a Statute) is essentially in realm of rights of sovereign, whereas obligation of agent to account for and pay amounts collected by him on behalf of principal is purely fiduciary hence, section 43B could not be invoked for making assessment of liability of assessee-corporation under Act with regard to amount collected by it as an agent of State towards tax payable by consumers of electricity to State.Followed Kerala State Electricity Board v. Dy.CIT (2010) 329 ITR 91 / (2011) 196 taxman 1 (Ker)(HC) (AY. 2006-07 to 2009-10)

PCIT v. Kerala State Electricity Board (2022) 137 taxmann.com 85 (Ker)(HC)

Editorial: Notice issued in SLP filed by Revenue, PCIT v. Kerala State Electricity Board. (2022) 286 Taxman 438 (SC)

S.43B: Deductions on actual payment-Service tax-Deduction available on actual payment.

Dismissing the appeal of the Revenue the Court held that Service tax deduction could be granted only upon actual payment and not on accrual as is provided under section 43B of the Act.(AY. 2013-14)

PCIT v. Zuberi Engineering Co. (2022) 286 Taxman 686 (Raj)(HC)

S.43B: Deductions on actual payment-Interest-The payment of interest had been made by issue of fully paid up shares to ICICI-Ltd-Disallowance of interest is not justified. [S. 260A]

Dismissing the appeal, that the finding of fact as recorded by the Tribunal was that the outstanding amount of interest to the tune of Rs. 2,70,00,000 payable to the ICICI-Ltd. was extinguished by offering shares for which a receipt was also issued by the ICICI-Ltd. by letter dated September 3, 2001. The payment of interest had been made by issue of fully paid up shares to ICICI-Ltd. The Appellate Tribunal was right in law and on facts in directing to allow Rs. 2.70 crores being interest payable to ICICI-Ltd. under section 43B.Followed M.M.Aqua Technologies Ltd v..CIT (2021) 436 ITR 582 (SC) (AY. 2001-02)

CIT v. Core Emballage Ltd. (2022)443 ITR 157/ 215 DTR 313 / 327 CTR 694 (Guj) (HC)

S. 43B : Deductions on actual payment - Employee's contributions (EPF/ESIC)- Deposited beyond due date stipulated in respective Acts- Disallowance is justified [S. 2(24) , 36(1)(va), 139(1), 143(1)(a))]

Assessing Officer denied said claim on ground that assessee had failed to deposit employees' contribution towards EPF/ESIC within due date stipulated in respective Acts . CIT(A) affirmed the order of the Assessing Officer . Tribunal held that the assessees' audit report clearly indicated due dates of payment to relevant funds under respective Acts and that said amounts were deposited by assessee beyond such due dates but before filing of return under section 139(1) of the Act . As per section 2(24) contribution by employees towards any provident fund becomes income of employer and instantly deduction under section 36(1)(va) can be allowed if such contributions are deposited by employer before due date stipulated in respective Acts, wherein due date under section 139(1) is alien for said purpose . Order of CIT(A) affirmed . Followed Checkmate Services (P) Ltd v .CIT (2022) 448 ITR 518 (SC) (AY. 2017 -18 to 2020- 21)

Cemetile Industries. v. ITO 2022) 220 DTR 265 / 220 TTJ 801/ (2023) 198 ITD 322 (Pune) (Trib.)

Late Dhannang Shankar Ganesh v. Dy.CIT (2022) 220 DTR 313 / 220 TTJ 813 (Chennai)(Trib)

Dy. CIT v . Wind World India Ltd. (2022)98 ITR 22 (Mum)(Trib)

Kohinoor Developments Corporation v. ACIT (2022)100 ITR 32 (SN)/(2023) 198 ITD 672 (Pune) (Trib)

S. 43B : Deductions on actual payment – Accrual basis –Interest on pertaining to earlier years- Allowable in the year of payment . [S. 36(1)(iii), 145]

Held that since the assessee has made payment of interest on loans pertaining to the earlier years in the relevant year, deduction of said interest is allowable on payment basis. Deduction cannot be disallowed on the ground that the assessee has not recorded such interest in the previous years to which the interest pertains . Order of CIT(A) is affirmed. (AY.2015 -16)

Dy. CIT v. Amex Carments (P) Ltd. (2022) 209 DTR 70/215 TTJ 112 (Chennai)(Trib)

S.43B: Deductions on actual payment-GST liability-Directly shown in balance sheet-Failure to pay before filing of return u/s 139 (1)-Disallowance is justified.[S. 139(1), 145A]

Held that the assessee failed to pay GST to credit of Central Government before due date of filing return under section 139(1). Merely because assessee did not claim deduction for GST liability and took the same directly to balance sheet, same would not circumvent section 43B. Disallowance of unpaid GST is held to be justified. (AY. 2019-20)

Husna Parveen (Smt.) v. CIT (2022) 197 ITD 134 (Varanasi) (Trib)

S.43B: Deductions on actual payment-Developer-External Development Charges-External Development Charges (EDC) to HUDA authority-Not a tax/duty/cess/fee, hence, does not attract provisions of section 43B-Allowable as deduction [S. 37(1), 145]

Held that External Development Charges (EDC) is a charge paid by developer and builder for obtaining services from HUDA authority like sewage, roads, lighting, etc. and in case assessee does not avail such facility, he is entitled for refund or adjustment of payment. Since payment is made against facilities availed by developer/builder/colonizer, EDC cannot be put in basket of mandatory or compulsory payment of duty, tax, cess or fee. Allowable as deduction. (AY. 2013-14)

Vipul Ltd. v. DCIT (2022) 197 ITD 556 (Delhi) (Trib.)

S.43B: Deductions on actual payment-Business of micro-financing-Acquired loan from three banks-Interest was not paid before due date of filing of return-Disallowance is held to be justified. [S. 43B(e), 139(1)]

Assessee-NBFC, engaged in micro-financing, had acquired loan from three banks for purpose of its business. It claimed interest paid as deduction which was not paid up to due date for filing of return. Held that since said three banks were included in second schedule to RBI Act, 1934 and fell within meaning of 'schedule bank', provision of section 43B(e) would be attracted and, accordingly, disallowance of interest paid on loan is held to be justified.(AY. 2012-13)

Spandana Sphoorty Financial Ltd. v. DCIT (2022) 196 ITD 217/ 217 TTJ 837 / 214 DTR 121 (Hyd) (Trib.)

S.43B: Deductions on actual payment-Leave encashment-constitutional validity of section 43B(f) had been upheld by Supreme Court-Disallowance is up held [S. 43B(f))]

Held that constitutional validity of section 43B(f) had been upheld by Supreme Court in UOI v. Exide Industries Ltd (2020) 273 Taxman 189/ 425 ITR 1 (SC), orders of lower authorities confirming disallowance of leave encashment provision under section 43B(f) is affirmed. (AY. 2010-11)

Everest Industries Ltd. v. DCIT (2022) 196 ITD 563 (Mum) (Trib.)

S.43B: Deductions on actual payment-Provident Fund contributions-Employee's share of contribution is made on or before due date for furnishing return of income under section 139(1), assessee would be entitled to claim deduction-Explanatory memorandum to Finance Act, 2021 proposing amendment in section 36(1)(va) as well as section 43B is applicable prospectively with effect from 1-4-2021.[S. 36(1)(va)), 139, 143(1)]

Held that employee's contribution of PF/ESI under section 36(1)(va) would also be covered under section 43B and if employee's share of contribution is made on or before due date for furnishing return of income under section 139(1), then assessee would be entitled to claim deduction. Explanatory memorandum to Finance Act, 2021 proposing amendment in section 36(1)(va) as well as section 43B is applicable prospectively with effect from 1-4-2021 (AY. 2019-20)

Ramachandra Naveen. v. ADIT (2022) 194 ITD 434 (Bang) (Trib.)
Arihant Automobiles. v. ITO (2022) 194 ITD 509 (Jabalpur) (Trib.)
Shree Shyam Designs (P.) Ltd. v. ADIT (2022) 194 ITD 528 (Bang) (Trib.)
Kanthi Agency Networks. v. ADIT (2022) 194 ITD 581 (Bang) (Trib.)
Paramjeet Singh. v. DCIT (2022) 194 ITD 685 (Chandigarh) (Trib.)
Punjab Bevel Gears Ltd. v. DCIT (2022) 194 ITD 756 (Delhi) (Trib.)
Raj Kumar. v. ITD CPC, (2022) 194 ITD 802 (Delhi) (Trib.)
Devarayapatana Thimmappa Paramesha. v. DCIT (2022) 194 ITD 325 (Bang) (Trib.)

Environs Management (Bangalore) (P.) Ltd. v. ITO (2022) 194 ITD 67 (Bang) (Trib.)

Arjun Yadav v. Dy. CIT (2022)94 ITR 74 (SN)(Chandigarh) (Trib)
Lumino Industries Ltd. v. ACIT (2022) 94 ITR 675/ 215 TTJ 62/ 213 DTR 290 (Kol)(Trib)
Navayug Labour Contractors Pvt Ltd v. ACIT (2022) 94 ITR 675 (Kol)(Trib)

Jagannath Concreate Poles v. ACIT (2022) 94 ITR 675 (Kol)(Trib)

Sandeep Mech. Engineers Ltd v. ACIT (2022) 94 ITR 675 (Kol)(Trib)

Jaimatadi Castings Pvt Ltd v. ACIT (2022) 94 ITR 675 (Kol)(Trib)
Flying Fabrication. v. DCIT (2022) 192 ITD 638 (Delhi) (Trib.)
Bizviz Technologies Ltd. v. DCIT (2022) 193 ITD 129 (Bang) (Trib.)
Eskay Heat Transfers (P.) Ltd. v. ACIT (2022) 193 ITD 97 (Bang) (Trib.)

Empower Guarding Services (P.) Ltd. v. ACIT (2022) 193 ITD 234 (Bang) (Trib)
Bromide Chemical Industries. v. DCIT (2022) 193 ITD 325 (SMC) (Jabalpur) (Trib.)
Megneil tech (P) Ltd. v. CIT (2022) 193 ITD 314 (Bang) (Trib)
Adyar Ananda Bhavan Sweets India (P.) Ltd. v. ACIT (2022) 193 ITD 460 / 215 TTJ 1013/ 209 DTR 345 (Chennai) (Trib.)
Kunamneni Technologies (P.) Ltd. ACIT (2022) 193 ITD 412 (Bang) (Trib.)
Srinivas Achar Mohankumar. v. ITO (2022) 193 ITD 427 (Bang) (Trib.)
Prakash Pai Kochikar. v. ACIT (2022] 193 ITD 569 (Bang) (Trib.)
Volantis Technologies (P.) Ltd. v. DCIT (2022) 193 ITD 543 (SMC)) (Bang) (Trib.)
Anusha Techno Ventures. v. ACIT (2022) 193 ITD 658 (SMC) (Bang) (Trib.)
B. R. S. Precision Manufacturing (P.) Ltd. v. DCIT (2022) 193 ITD 641 (SMC) (Bang) (Trib.)
Vidhi Clothing Company. v. DCIT (2022) 193 ITD 645 (Bang) (Trib.)
Haylide Chemicals (P.) Ltd. v. DCIT (2022) 193 ITD 723 (Jabalpur) (Trib
Shakti Apifoods (P.) Ltd. v. Assessing Officer (2022) 193 ITD 751 (Chd) (Trib.)

DCIT v. Godawari Power & Ispat Ltd. (2022) 193 ITD 869 (Raipur) (Trib.)
Devender Yadav. v. ITD CPC (SMC) (2022) 193 ITD 836 (Delhi) (Trib.)
Krishna Enterprises v.ADIT (2022)93 ITR 15 (SN) (SMC) (Bang) (Trib)
Shand Pipe Industry Pvt. Ltd. v. Dy CIT (CPC) (2022)93 ITR 54 (SN)(Bang) (Trib)
TML Business Services Ltd. v. Dy CIT (CPC) (2022)93 ITR 35 (SN)(Mum) (Trib)

Nikhil Mohine v. Dy. CIT (2022)93 ITR 658 / 215 TTJ 86/ 213 DTR 343 (SMC) (Jabalpur) (Trib)
Marappa Shivakumar v. Dy. CIT (2022)94 ITR 1 (SN)(Bang)(Trib)
Vishal Enterprises v. Dy. CIT (2022)94 ITR 27 (SN)(Bang)(Trib)
Shaku ntala Agarbathi Company v. DCIT (2022) 216 TTJ 49 (UO) (Bang.)(Trib.)
Moona Dewan. v. ACIT (2022) 194 ITD 281 (Jaipur) (Trib.)
Tandem Allied Services (P.) Ltd. v. CIT (2022) 195 ITD 18 (Bang) (Trib.)
Kalpesh Synthetics(P) Ltd. v. Dy. CIT (2022) 213 DTR 217 / 217 TTJ 513 / 137 taxmann.com 475 / 96 ITR 690 / 195 ITD 142 (Mum)(Trib)
Titanic Steel Industries (P.) Ltd. v. DCIT (2022) 195 ITD 90 (Chd) (Trib.)

Waidhan Engineering and Industries (P.) Ltd. v. DCIT (2022) 195 ITD 104 (Jabalpur) (Trib.)
Chintoo Creations. v. DCIT (2022) 195 ITD 192 (Delhi) (Trib.)
P.R. Packaging Service v. ACIT (Mum)(Trib) www.itatonline.org

Sandeep Kumar Agarwal. (2022) 97 ITR 613 / 195 ITD 457 (Delhi) (Trib.)
Shivganga Drillers (P.) Ltd. v. CPC, Income-tax, Bangalore (2022) 195 ITD 555 (Indore) (Trib.)
Chintoo Creations v.Dy. CIT (2022) 195 ITD 192 (Delhi)(Trib)
Titanic Steel Industries (P) Ltd v. Dy.CIT (2022) 195 ITD 90 (Chd)(Trib)
Sundaram BNP Paribas Home Finance Ltd. v. DCIT (2022) 196 ITD 198 (Chennai) (Trib.)
Coronation Cigar Co. v. DCIT (2022) 196 ITD 498 (Mum) (Trib.)
DCIT v. Maharashtra State Security Corporation. (2022) 196 ITD 653 (Mum) (Trib.)
K A Hospitality (P.) Ltd. v. ITD (2022) 197 ITD 114 (Mum) (Trib.)
Mehra Eyetech (P.) Ltd. v. ACIT (2022) 197 ITD 124 (Mum) (Trib.)
Jasbir Singh Kaberwal. v. ACIT (2022) 197 ITD 299 (Mum) (Trib.)
JSW Cement Ltd. v. ACIT. DCIT (2022) 197 ITD 380 / 220 TTJ 48 /217 DTR 385 (Mum) (Trib.)
Mahesh D. Saini. v. ITO (2022) 197 ITD 513 (Mum) (Trib.)
DCIT v. Team HR GSA (P.) Ltd. (2022) 197 ITD 580 (Mum) (Trib.)
Legacy Global Projects (P.) Ltd. v. ADIT (2022) 197 ITD 655/ 100 ITR 9 (SN) (Bang) (Trib.)
Geomin Industries (P) Ltd v.ACIT (2022) 197 ITD 505 (Jabalpur)(Trib)
Electrical India & ors v. ACIT (2022) 220 TTJ 813/ 220 DTR 313 (Chennai)(Trib)
Abdul Hassan Risvi v. ACIT (2022) 220 TTJ 813/ 220 DTR 313 (Chennai)(Trib)
Suman Solanki v Dy. CIT, CPC/ ITO (2022)98 ITR 97 (Jaipur) (Trib)

ACIT v .New Saravana Stores Brahmandamai (2022)95 ITR 7 (SN)(Chennai) (Trib)

Mayajaal Entertainment Ltd. v. Dy. CIT (2022)95 ITR 86 (SN)(Chennai) (Trib)

Sandeep Kumar Agarwal v. ACIT (2022)97 ITR 613 (Trib)(Delhi) (Trb)

Neev Infrastructure Pvt. Ltd. v. A CIT (2022)97 ITR 38 (Trib) (SN) (Mum) (Trib)

GSD Constructions Indore (P) Ltd. .v. Dy. CIT (2022) 217 TTJ 33 (UO) / 141 taxmann.com 69 (Indore) (Trib)
Dy. CIT v .G4S Facility Services (India) Pvt. Ltd. (2022) 99 ITR 206 (Delhi)(Trib)

Aroon Facilitation Management Service(P) Ltd. v Dy. CIT (2022) 215 TTJ 722 (SMC) (Delhi)(Trib)
Vinko Auto Industries Ltd. v. Dy. CIT (2022) 209 DTR 201/215 TTJ 405 (Asr) (Trib)
Editorial: Refer, Checkmate Services P. Ltd. v. CIT (2022)448 ITR 518/ 218 DTR 218 /329 CTR 1 (SC)

S.43B: Deductions on actual payment-Sales tax demand disputed in appeal-Deduction allowable when the actual liability is crystalised by the VAT Authority.

Held that sales tax demand which is disputed is allowable as deduction when the actual liability is crystalised by the VAT Authority.(ITA No. 6987 /Mum/ 2019 dt 5-1-2022)(AY. 2015-16)

Drisha Impex Pvt Ltd v. DCIT (2022) The Chamber's Journal-March-P. 117 (Mum) (Trib)

S.43B: Deductions on actual payment-Service tax payment-For granting deduction only when amount of such tax, etc., is actually paid by assessee, that deduction will be allowed. [S. 43B(a), 145A(ii)]

Held that incurring of liability to pay tax, duty, cess or fee, etc., in a particular previous year is not a relevant criterion for granting deduction, and when amount of such tax, etc., is actually paid by assessee, then only deduction will be allowed to assessee**.** (AY. 2014-15)

Shirode Automobiles (P.) Ltd. v. ACIT (2022) 193 ITD 777 / 217 TTJ 382 / 213 DTR 95 (SMC) (Pune) (Trib.)

S.43B: Deductions on actual payment-Disallowance of interest in earlier years-Allowable in the year of payment. [S. 145]

Assessee-company had raised a term loan from Gujarat Industrial Investment Corporation Ltd. (GIIC) in year 1973 for acquisition of new plant and machinery. The interest was provided in the books of account, however the payment was not made hence the interest was disallowed. As per the terms of the OTS the interest paid for earlier years claimed as deduction which was disallowed. On appeal the Tribunal held that interest paid is allowable as deduction. (AY. 2010-11)

DCIT v. K.S. Diesels Ltd. (2022) 192 ITD 21 (Mum) (Trib.)

S. 44BB : Mineral oils – Computation –Non -Resident - Service tax collection – Excluded from gross receipts - Difference in revenue offered to tax and revenue as shown in Form 26AS- Foreign currency rate - Matter remanded . [R. 115(1), From No.26AS]

Held that Service-tax should be excluded from gross receipts for the purpose of computation of income under S. 44BB of the Act .Followed **Dy** CIT (IT) v. Global Santafe Drilling Co (ITA No 5638/Mum/2016, dt 9th Dec, 2019 . Held that in view of R. 115(1), income received in foreign currency is required to be converted into Indian rupees at the TT buying rate on the specified date, there is bound to be variations in the revenues computed in the hands of the assessee vis-a-vis revenues converted as on the date on which foreign currency payments are made by the payer Income-tax Act. Difference in revenue offered to tax and revenue as shown in Form 26AS- Foreign currency rate . Matter remanded (AY.2014 -15)

Dy. CIT (IT) v. Globle Santage Drilling Co. (2022) 210 DTR 308 (Mum)(Trib)

S.43CA: Transfer of assets-other than capital assets-Full value of consideration-stock in trade-Agreement value-Stamp valuation-First proviso to section 43CA inserted by Finance Act, 2020 with effect from 1-4-2021 is applicable retrospectively-Difference recorded between sale value of flats sold by assessee and stamp value of such flats was within 10 per cent margin-Addition is deleted. [S.50C]

During year the assessee sold certain flats. Assessing Officer made addition under section 43CA being difference between sale value of flats sold and stamp duty value. Assessee contended that difference was less than 10 per cent margin and, therefore, not required to be added. Held that first proviso to section 43CA inserted by Finance Act, 2020 with effect

from 1-4-2021 stated that if there was a difference between consideration received by assessee as a result of transfer of land or building and value adopted by Government Authority for purpose of payment of stamp duty was within 10 per cent margin then there could not be any addition on pretext of deemed income Followed CIT v. Vatika Township (P.) Ltd (2014) 227 Taxman 121. 367 ITR 466 (SC) wherein the Court held that if a fresh benefit was provided by Parliament in an existing provision then such an amendment should be given retrospective effect. Even without going into merits of case by application of first proviso to section 43CA having retrospective effect, appeal is allowed. (AY. 2015-16)
Sai Bhargavanath Infra. v. ACIT (2022) 197 ITD 496 (Pune) (Trib.)

S.43CA: Transfer of assets-other than capital assets-Full value of consideration-stock in trade-Agreement value-Stamp valuation-Proviso to section providing for tolerance limit of 10 percent, being beneficial in nature is, retrospective. [S.50C]

Held that proviso to section 43CA which provide for a tolerance limit of 10 percent has been introduced by the Finance, Act, 2020 w.e.f 1st April 20021 being beneficial in nature is retrospective. (TS. 658-ITAT-2022 (Pune) dt. 17-8-2022) (AY. 2014-15)

Sai Bhargavnath Infra v. ACIT (2022) BCAJ-October-P. 69 (Pune)(Trib)

S.43CA: Transfer of assets-other than capital assets-Full value of consideration-stock in trade-Agreement value-Stamp valuation-Allotment letter-Where allotment letters are issued and part payments are received prior to Ist April, 2013-Provision of section 43CA does not apply-Difference less than 5%-Provision does not apply. [S.50C]

Held that since the allotment letters were issued and initial payments were received prior to coming in to force of section 43CA, the provision does not apply to those cases. Tribunal also held that the difference between ready reckoner rate and sale consideration was only 5 % the same needs to be ignored. Referred Krishna Enterprises v. ACIT. (TS-63-ITAT-2022 (Mum) (AY. 2014-15)(Dt. 27-1 2022)

Spenta Enterprises v.PCIT (2022) BCAJ-March-P. 39 (Mum)(Trib)

S.43CA: Transfer of assets-other than capital assets-Full value of consideration-stock in trade-Agreement value-Stamp valuation –Difference between the consideration value and stamp duty value is less than 10%-No addition can be made-Third proviso inserted by the Finance Act, 2020 in section 50C of the Act is held to be retrospective in operation from 1-4 2003 [S.50C]

Held that the difference between the consideration value and stamp duty value is less than 10% hence no addition can be made. Third proviso inserted by the Finance Act, 2020 in section 50C of the Act is held to be retrospective in operation from 1-4 2003. Followed Maria Fernandes Cheryl v.ITO (2021) 187 ITD 738 (Mum)(Trib).
(ITA No. 1953 /Mum/ 2020 / 1954/Mum/ 2020/ 11/Mum/ 2021/ 12 /Mum/ 2021 Bench 'E' dt. 27-6 2022)(AY. 2015-16, 2017-18)

Sheth Developers Pvt Ltd v.Dy.CIT(Mum)(Trib) www.itatonline.org

S. 44 : Insurance business-Computation of profits-Loss was computed by aggregating its reporting under shareholders account and policy holders account as prescribed under Insurance regulatory and development authority (IRDA) [S.115B, 260A]

Assessee is engaged in business of life insurance, had filed its return of income declaring certain losses. Loss was computed by aggregating its reporting under shareholders account and policy holders account as prescribed under Insurance regulatory and development authority (IRDA) Assessing Officer held that income relating to policy holders was different from income of shareholders and both such income being derived from different sources could not be mixed up as life insurance to avail concessional rate. He accordingly completed assessment under section 143(3) and taxed surplus under shareholders account as income from business at normal rates. On appeal Tribunal allowed the claim of the assessee. On appeal by Revenue High held that since assessee is engaged in only life insurance business and was not carrying on any other business, section 44 read with rule 2 of First Schedule was applicable and thus surplus with deficit as per shareholder's account was to be aggregated with surplus with deficit in policyholder's account for determining profit or loss of assessee under section 44 of the Act. (AY. 2011-12 to 2013-14)

PCIT v. PNB Metlife India Insurance Co. Ltd. (2022) 140 taxmann.com 86 (Karn)(HC)

Editorial : Notice issued in SLP filed by Revenue, PCIT v. PNB Metlife India Insurance Co. Ltd. (2022) 288 Taxman 1 (SC)

S. 44 : Insurance business-Life Insurance business-Income to be computed under Rule 2 To First Schedule-Loss from pension fund can be set off and also carried forward [S. 10(23AAB, 10A,115B]

Held that income from insurance business has to be considered by the actuarial valuation as per the valuation report allowable under section 44 read with First Schedule to the Act. Merely for the reason that the income from pension fund is exempted under section 10(23AAB) with effect from April 1, 1997, it cannot be held that the loss incurred under the fund cannot be carried forward or given a set-off. The object of inserting section 10(23AAB) being made clear by Circular No. 762 dated February 18, 1998 ([1998] 230 ITR (St.) 12), it cannot be equated with the provisions of section 10A of the Act. The circular provides that the Life Insurance Corporation of India has started a new personal-cum-family pension scheme. The Scheme offers attractive terms to its contributors and has a provision for payment of a life-time widow's pension in the event of the death of the contributor during the contribution period. (AY. 2012-13, 2014-15)

PCIT v. Exide Life Insurance Co. Ltd. (2022) 444 ITR 518/ 209 DTR 391/ 324 CTR 514/ 289 Taxman 20 (Karn)(HC)

S. 44 : Insurance business-Life insurance Business-Section 44 read with Rule 2 of Part A of First Schedule is applicable and not Rule 5 of Part B.

In the assessee's own case relating to the AY. 2010-11, considering the challenge made to the order of the Commissioner (Appeals) that policyholders account and shareholders' account had to be considered separately and the benefit of section 115B of the Income-tax Act, 1961 could be given only to the profits from life insurance business, the Tribunal had held that there was no dispute that the assessee was doing only life insurance business as regulated by the Insurance Regulatory and Development Authority. For the subsequent AY.s, the

Tribunal had followed its decision in the assessee's own case and had held that the surplus with deficit as per shareholders' account should be aggregated with surplus with deficit in the policyholders account for determining the profit or loss of the assessee under section 44. The Tribunal was justified in holding that the assessee had correctly computed the profits of life insurance business.(AY. 2011-12, 2012-13, 2013-14)

PCIT v. PNB Metlife India Insurance Company Ltd. (2022)443 ITR 415/ 209 DTR 383/ 324 CTR 506 (Karn)(HC)

S. 44AB: Audit of accounts-Business-Profession-Remuneration received from Partnership Firm-Firm is separate legal entity-Remuneration and interest from partnership firm-Not to be included in gross receipt or turnover-Presumptive basis-No tax Audit is required,if remuneration does not exceeds threshold limit for Tax Audit-Return cannot be treated as invalid for failure to get Tax Audit report.[S. 2(13), 2(31)(iv), 2(36), 44AD, 139(9), 264,271B, Art, 226]

The petitioner is an actress shown her professional income and also remuneration from two partnership firms in her return of income.. The professional income being less than prescribed limit petitioner has not obtained the tax Audit report. The Assessing Officer held that though the professional income was less than the prescribed limit for the Tax audit,the remuneration received from two partnership firms being more than the prescribed limit of gross receipts of one crore, the petitioner ought to have obtained tax audit report. As the tax audit report was not obtained the return was treated as invalid. The petitioner filed revision application before the Commissioner u/s 264 of the Act. Commissioner also affirmed the order of the Assessing Officer. The petitioner filed writ petition before the High Court challenging the treating the return as invalid. Honouarble Court referred to the decision of the Hon'ble Madras High Court in the case of Anandkumar v. ACIT (2021) 430 ITR 391 (Mad)(HC) where the Assessing Officer held that the assessee did not have any turnover and receipts on account of remuneration and interest from the firms cannot be construed as gross receipts mentioned in Section 44AD of the Act. The case was decided in the favour of the Revenue. The Honourable High Court held that the remuneration and interest from the partnership firm cannot be treated as gross receipt of the assessee. The order of Commissioner affirming the order of the Assessing Officer treating the return as in valid was quashed and set aside. (AY. 2017-18)

Perizad Zorabian Irani v. PCIT (2022) 287 Taxman 406 // 328 CTR 909/ 218 DTR 219 / 113 CCH 339 (Bom)(HC)

S. 44AD : Presumptive taxation- Cash credits – Civil construction -— 8 Per Cent. of cash deposits to be treated as income- Entire cash deposits in bank account cannot be taxed .[S.69A]

Held that the firm in which the assessee was a partner was also in the business of construction. The burden under section 69A of the Act is only to give a satisfactory explanation. The facts and circumstances of a given case would be sufficient to draw an inference that the receipts can be attributed only to business and no other source. Therefore, eight per cent. of the cash deposits were to be treated as income of the assessee from business of civil construction in lieu of taxing the entire cash deposits in the bank account or cash credit. Addition cannot be made as unexplained cash credits . (AY.2012-13 to 2017-18)

Gregory Francis D'silva v. Dy. CIT (2022)100 ITR 62 (SN)(Bang) (Trib)

S. 44AD :Presumptive taxation-Cash credit-Bank deposits in cash-Turnover-Submitted memorandum Trading and Profit and Loss account and Balance Sheet-Addition was deleted [S. 68]

The Assessee is a small trader who has filed the return of income under section 44AD of the Act. The AO made an addition in respect of cash deposited in the Bank as cash credits under section 68 of the Act. On appeal the Tribunal held that the assessee had explained that cash deposited in the bank account was out of cash turnover of Rs. 16.02 lakhs, as declared, therefore, the assessee had proved his bona fide, about cash deposited in the bank account. The assessee also submitted a memorandum Trading and Profit and Loss account and Balance Sheet to Assessing Officer and Assessing Officer had not made any adverse finding in any of these documents. The addition was deleted. (AY. 2010-11)
Mansukh K. Vaghasia. v. ITO (2022) 195 ITD 99 (Surat) (Trib.)

S. 44AD :Presumptive taxation-Civil construction business-depreciation-Rejection of books of account and estimate of income applying rate of 8 percent-No separate claim of depreciation is allowable [S. 32, 144]

Assessee, a civil contractor, filed his return of income declaring total income. Assessing Officer rejected books of account and estimated income by applying rate of 8 per cent of total contract receipts and disallowed the depreciation. On appeal the Tribunal held that when the income is estimated no separate claim of depreciation is allowable. (AY. 2014-15)
Sudhakar Pandey. v. ACIT (2022) 193 ITD 557 (SMC) (All.) (Trib.)

S. 44B : Shipping business-Non-residents-Service tax receipts do not form part of receipts for computation of income.
Held that service tax receipts do not form part of receipts for computation of income. (AY. 2011-12
DCIT v. Schlumber Solutions (P.) Ltd. (2022) 193 ITD 293 (Dehradun) (Trib.)

S.44BB : Mineral oils-Computation Presumptive Tax-In connection with-Transportation of equipment from assessee's yard to offshore site, Inextricably connected with prospecting, extraction or production of mineral oils-Hire charges paid for tugs and barges to transport integral part of execution of contract-Payments taxable on presumptive basis. [S.9(1)(vi), 195,264, Art, 226]
On writ, allowing the petition, that the view of the Assessing Officer that the benefit of section 44BB would be admissible only to the person directly using the services or plant and machinery for exploring, extracting or producing mineral oils and not to the entity which had executed the contract for such person was not in consonance with the text of section 44BB. The service provider being a non-resident, under section 195, the assessee was enjoined to deduct tax thereon at source at the applicable rates. Moreover, the assessee had grossed up the profits by 10 per cent. and had paid the taxes. The scope of work under the contract was comprehensive from survey to the commissioning of entire facilities on turn-key basis at the offshore site. The platform in question was to be used in maintaining and enhancing the production or extraction capacity of mineral oil. The tugs hired by the assessee were used for towing the compression module of platform, from the assessee's yard to the offshore platform. In connection with the execution of the contract, the Director General of Hydro Carbons had issued an essentiality certificate to import the cargo (barge) for the petroleum operations. The assessee had entered into a contract with the Corporation on turn-key basis

for enhancing the exploration or production capacity of the platform at the offshore site and for such purpose the assessee had hired the tugs and barges from non-residents. The authorities were not justified in concluding that the use of the tugs and barges was in the nature of a mere transportation facility. On the facts, the Director (IT) had recorded that the tugs were hired by the assessee to transport the compressor module, which was an integral part of the execution of the contract by the assessee from the yard to the offshore platform. Considering the object of special dispensation and the proximate use to which the facility or service or plant and machinery was put, the hire of the tugs and barges to transport an integral part of the equipment to enhance the exploration or production capacity, was inextricably connected with the extraction and production of mineral oil. Therefore, the payments made by the assessee to the non-residents in the execution of the contract with the Corporation was assessable under the provisions of section 44BB. The order passed by the Director (International Taxation) under section 264 and the order passed by the Deputy Director (IT) under section 195 were quashed and set aside.

Larsen & Toubro Ltd. v. Girish Dave (DIT(IT) (2022)442 ITR 217 / 212 DTR 433/ 326 CTR 194/ 286 Taxman 267 (Bom) (HC)

S. 44BB : Mineral oils-Computation-Presumptive tax-Non-Resident-Prospecting for, or extraction or production of mineral oils-Receipt on account of reimbursement of expenses-Amounts received towards mobilization advance-Includible in gross receipts-Service tax receipts-Excludible.

Held that receipt on account of reimbursement of expenses was includible in the gross receipts under section 44BB. Followed CIT v. Halliburton Offshore Services Inc.(2008) 300 ITR 265 (Uttarakhand)(HC) That the amounts received towards mobilization were includible in the total amount received by the assessee against its work. Followed Sedco Forex International I nc. v. CIT (2008) 299 ITR 238 (Uttarakhand) (HC) (affirmed in (2017) 399 ITR 1 (SC). That the exclusion of service tax receipts from the gross receipts for purposes of section 44BB was proper.(AY.: 2013-14)

Transocean Offshore International Venture Ltd. v.Dy. CIT (IT) (2022) 94 ITR 59 (SN)(Dehradun) (Trib)

S. 44BB : Mineral oils-Non-Resident-Computation-Service tax being statutory levy should not form part of gross receipts.

Held that Service tax being statutory levy should not form part of gross receipts as per provisions of section 44BB of the Act. (AY.2005-06, 2006-07)

DCIT (IT) v. Deepwater Pacific 1 Inc. (2022) 193 ITD 11 (Dehradun) (Trib.)

S. 44BB : Mineral oils-Computation-Contract with ONGC for replacement of well fire shut down panels at offshore platform on a turnkey basis-Amounts were remitted directly to UAE by ONGC-DRP erred in apportioning 10 per cent of gross receipts as taxable income-Section 44BB did not override provisions of section 5 of the Act-DTAA-India-USA [S. 5, 9(1)(i), Art, 5, 7]

Assessee, a UAE based company, was engaged in a contract with ONGC for replacement of well fire shut down panels at offshore platform on a turnkey basis. It submitted that all these activities were carried out in Dubai and thus, related revenues were not taxable in India under section 5 read with section 9 and under article 5 read with article 7 of India-USA DTAA.

Assessing Officer held that entire project was turnkey project and, hence, no bifurcation could be made in income accruing inside and outside India and total income was income accruing in India under section 5 but as assessee had not maintained books of account, Assessing Officer estimated income at 25 per cent of gross receipts. DRP applied deemed profit rate of 10 per cent of gross revenue of assessee under section 44BB. On appeal the Tribunal held that whether since engineering designs were prepared entirely at assessee's specialities outside India and sent to ONGC from UAE and amounts were remitted directly to UAE by ONGC and keeping in view supply of material outside India, designs conducted, list of material and presence of employees in India, DRP erred in apportioning 10 per cent gross receipts as taxable income as provisions of section 44BB do not override provisions of section 5 of the Act. (AY. 2008-09, 2009-10)

Petronash FZE. v. ADIT (IT) (2022) 193 ITD 846 (Dehradun) (Trib.)

S. 44BBA : Air craft-Non-residents –Gross receipts-Service tax-Fiduciary capacity-Service tax was to be excluded from gross receipts while computing total income of assessee on presumptive basis.

Held that service tax collected by assessee on behalf of Central Government in a fiduciary capacity would not fall within turnover to be considered for deemed income under presumptive tax under section 44BBA and was to be excluded from gross receipts while computing total income on presumptive basis. (AY. 2015-16)

ACIT (IT) v. Cathay Pacific Airways Ltd. (2022) 197 ITD 102 (Kol) (Trib.)

S. 44BBB : Foreign companies-Presumptive tax-Turnkey power projects-Income from offshore supplies not liable to tax in India-Books of account not required to be maintained-Fixed percentage of receipt deemed to be income-Income from power projects to be taxed on cash basis and not on mercantile basis-DTAA-India-Japan [Art, 7 (6)]

Held, that income from offshore supplies was not liable to tax in India under section 44BBB as well as under the provisions of paragraph (6) of article 7 of the Double Taxation Avoidance Agreement between India and Japan. Held that Mitsui was not a dependent agent permanent establishment of the assessee. Hence, no income could be attributed to the operations of the assessee in India and under article 7 of the Double Taxation Avoidance agreement. Held, that while computing the presumptive income books of account were not required to be maintained. Therefore, what was received by the assessee during the year a fixed percentage of such receipt was deemed to be the income. Order of CIT(A) is affirmed.*(*AY. 2009-10, 2011-12)

Dy. CIT (IT) v. Mitsui and co. (2022) 94 ITR 34 (Delhi)(Trib)

S. 44DA : Non-residents-Royalties-Computation-Permanent Establishment-All contracts negotiated and signed in India by branch head-Activities under each contract in India for more than six months-Income earned from contracts connected to Permanent Establishment in India-Taxable at 40 Per Cent.on net income basis in accordance with RBI guidelines.

Held that CIT (A) had rightly held that the income earned by the assessee under such contracts was effectively connected to a permanent establishment in India and was liable to be taxed at 40 per cent. on net income basis according to the Reserve Bank of India guidelines. AY. 2012-13)

Dy. CIT (IT) v. DHV B. V. (2022)94 ITR 46 (SN)(Delhi) (Trib)

S. 45: Capital gains-When the Tribunal held that no capital gains can be levied since there is no consideration for transfer of a capital asset and thus the computation mechanism fails, there was no error in the said conclusion reached by the Tribunal. [S. 48, 50D]

In case of a transfer of capital asset, what can be taxed in the hands of the seller is real or actual gain that accrues/ arises from transfer of the assets and hence, in absence of any sale consideration no notional gain can be imputed in the hands of the seller to tax such transfer. The AO has failed to understand that carrying out revaluation and passing accounting entry in the books of account does not represent transfer taken by the assessee. Further, provisions of section 50D which provides for fair market value deemed to be the full value of consideration in certain cases has been inserted by the Finance Act, 2012. for the assessment year 2013-14 and hence cannot be applied for the year under consideration i.e. AY. 2010-11. (AY. 2010-11)

PCIT v. Aditya Birla Telecom Ltd. (2022) 212 DTR 457/ 327 CTR 350 (Bom)(HC)

S. 45 : Capital gains-Two separate accounts-Investment portfolio-Stock in trade-Sale of investments assessable as capital gains and not as business income [S. 28(i)]

Allowing the appeal of the assessee the Court held that on the facts of the case the assessee maintained two separate accounts in respect of its dealing in mutual funds and shares i.e., one for its investment portfolio and other for stock-in-trade. Accordingly the sale of investments are assessable as capital gains. Order of Tribunal reversed and the order of CIT (A) is affirmed. Referred CBDT Circular No. 4/2007, dated 15-6-2007. (AY. 2005-06)

Gyan Traders Ltd. v. CIT (2022) 289 Taxman 628 (Cal)(HC)

S. 45 : Capital gains Full value of consideration-Deductions-Consideration on sale of shares including sum held in Escrow Account offered to tax-Receiving reduced sum from Escrow Account after Completion of assessment-Whole amount credited in book not taxable as capital gains-Only actual amount received taxable-Entitled to refund of excess tax paid-Re computation can be less than the returned income-Proviso to section 240 is not applicable-The assessee can be asked to pay only such amount of tax which is legally due under the Act and nothing more-Entitle to refund of excess tax paid [S. 48, 264, Art, 226]

The assessee computed the capital gains on sale of shares taking into account the proportion of the total consideration which included the escrow amount which had not been received by the time returns were filed but were received by the promoters but were still parked in the escrow account. The income declared by the assessee was accepted in the scrutiny assessment. The assessee stated that subsequent to the sale of the shares certain statutory and other liabilities arose for the period prior to the sale of the shares and according to the agreement, certain amount was withdrawn from the escrow account and it did not receive the

amount. The assessee filed an application under section 264 before the Principal Commissioner and submitted that the capital gains were to be recomputed accordingly reducing the proportionate amount from the amount deducted from the escrow account and that an application under section 264 was filed since the assessment had been completed by the time the amount was deducted from the escrow account. The Principal Commissioner rejected the assessee's application. On writ allowing the petition the Court held that that capital gains was computed under section 48 of the Act by reducing from the full value of consideration received or accrued as a result of transfer of capital asset, cost of acquisition, cost of improvement and cost of transfer. The real income (capital gains) could be computed only by taking into account the real sale consideration, i. e., sale consideration after reducing the amount withdrawn from the escrow account. The amount was neither received nor accrued since it was transferred directly to the escrow account and was withdrawn from the escrow account. When the amount had not been received or accrued it could not be taken as full value of consideration in computing the capital gains from the transfer of the shares of the assessee. The purchase price as defined in the agreement was not an absolute amount as it was subject to certain liabilities which might have arisen on account of certain subsequent events. The full value of consideration for computing capital gains would be the amount which was ultimately received after the adjustments on account of the liabilities from the escrow account as mentioned in the agreement. The liability as contemplated in the agreement should be taken into account to determine the full value of consideration. Therefore, if the sale consideration specified in the agreement was along with certain liability, then the full value of consideration for the purpose of computing capital gains under section 48 of the Act was the consideration specified in the agreement as reduced by the liability. The full value of consideration under section 48 would be the amount arrived at after reducing the liabilities from the purchase price mentioned in the agreement. Even if the contingent liability was to be regarded as a subsequent event, it ought to be taken into consideration in determining the capital gains chargeable under section 45. Such reduced amount should be taken as the full value of consideration for computing the capital gains under section 48. If income did not result at all, there could not be a tax, even though in book keeping, an entry was made about hypothetical income which did not materialize. Therefore, the Principal Commissioner ought to have directed the Assessing Officer to recompute the assessee's income irrespective of whether the computation would result in income being less than the returned income. CIT v. Shoorji Vallabhdas and co.(1962) 46 ITR 144 (SC), relied. Court also held that reliance by the Principal Commissioner on the provisions of section 240 to hold that he had no power to reduce the returned income was erroneous because the circumstances provided in the proviso to section 240 did not exist. The proviso to section 240 only provides that in case of annulment of assessment, refund of tax paid by the assessee according to the return of income could not be granted to the assessee. The only thing that was sacrosanct was that an assessee was liable to pay only such amount which was legally due under the Act and nothing more. Therefore, the assessee was entitled to refund of excess tax paid on the excess capital gains. (AY.2011-12)

Dinesh Vazirani v. PCIT (2022)445 ITR 110/ 288 Taxman 325 (Bom)(HC)

S. 45 : Capital gains-Sale of property below circle rate-AO has the jurisdiction to examine the transaction to compute true capital gains [S. 50C, R. 11UA, Art, 226]

Assessee sold the property for Rs 378 crores. According to circle rate (stamp value rate) cost of property was Rs. 390 crores. Assessing Officer issued on assessee a notice stating that District Valuation Officer (DVO) determined fair market value of property at Rs. 418 crores

and asked it to explain as to why improvement cost in excess of what had been reported in valuation report of DVO should not be disallowed from cost of acquisition of property for calculation of capital gains under section 45 of the Act. The assessee filed the writ petition challenging the jurisdiction of the AO. Dismissing the petition the Court held that since property was sold by assessee below circle rate contrary to section 50C, Assessing Officer had jurisdiction to examine the transaction in detail (AY. 2018-19)
Avantha Realty Ltd v. ACIT (2022) 287 Taxman 315/ 212 DTR 399/ 326 CTR 247 (Delhi)(HC)

S. 45 : Capital gains-Investment in shares, mutual funds and debentures-Short term capital gains-Not assessable as business income-Rule of consistency followed [S. 28(i)]
Assessee-company, engaged in business of investment in shares, mutual funds and debentures, declared short-term capital gain on purchase and sale of shares and mutual funds and assessment was completed. CIT set aside the order on the ground that the Assessing Officer did not properly examine question as to whether gain on purchase and sale of shares and securities had to be assessed as capital gain or income from business and directed Assessing Officer to make a fresh assessment. Assessing Officer held that gain on sale of shares had to be assessed as business income. . On appeal the Tribunal held that shares and mutual fund had been held as an investment and not as stock-in-trade and similar transactions were accepted by department for earlier year and subsequent assessment years as giving rise to capital gain and not as business income. High Court affirmed the order of Tribunal. (AY. 2006-07)
PCIT v. Purvanchal Leasing Ltd. (2022) 287 Taxman 20/ 113 CCH 288 (Cal.)(HC)

S. 45 : Capital gains-Transfer-Immovable property-Unregistered agreement-Joint development agreement-Payment from developer-Not assessable as capital gains [S. 2(47)(v), Transfer of Property Act, 1882, S.53A]

During assessment year under an unregistered agreement the assessee received certain payment from developer of property. The Assessing Officer held that the assessee has handed over the possessing of property to developer and assessed the amount as capital gains. Commissioner (Appeals) held that full amount payable under agreement had accrued to assessee in assessment year 2009-10 hence affirmed the order of the Assessing Office. Tribunal held that after amendment to section 53A of Transfer of Property Act, 1882 which was amended by Amendment Act, 2001 which stipulates that if an agreement like joint development agreement is not registered then it shall have no effect in law for purposes of section 53A of the Act. Accordingly deleted the addition. On appeal High Court held that in light of law laid down by Supreme Court in case of CIT v. Balbir Singh Maini (2017) 398 ITR 531/ 251 Taxman 202 (SC) to effect that if development agreement is not registered it shall have no effect in law for purposes of section 53A which bodily stood incorporated in section 2(47)(v) of the Act. Accordingly the Tribunal was right in allowing assessee's appeal and granting relief. (AY. 2009-10)
PCIT v. Shelter Project Ltd.(2022) 445 ITR 291/ 286 Taxman 392 (Cal)(HC)

S. 45 : Capital gains-Shares and securities as investment-Assessable as capital gains and not as business income-Interest free funds available was more than gross investment-No disallowance can be made [S. 14A, 28(i), R.8D]

Dismissing the appeal the Court held that capital gains arising from investment in shares and securities was rightly treated by the Tribunal as capital gains. Court also held that interest

free funds available with assessee were far more than gross investment, hence no disallowance of can be made under section 14A of the Act.
PCIT v. Gujarat Fluorochemicals Ltd. (2021) 133 taxmann.com 211 (Guj)(HC)
Editorial : SLP of revenue is dismissed as infructuous; PCIT v. Gujarat Fluorochemicals Ltd. (2022) 284 Taxman 451 (SC)

S. 45 : Capital gains -Business income or capital gains – Sale of Godown -Rental income was offered as income from house property – Profit on sale of Godown assessable as long term capital gains - Compensation for relinquishment of right to receive residential Flat under allotment letter — Assessable as capital gains- Interest expenses claimed as part of acquisition – Indexation cost – Matter remanded . [S. 28(i), 48]
Held that the rental income from the Godown had been offered to tax under the head Income from house property , therefore profit on sale of Godown assessable as long term capital gains. Compensation received for relinquishment of right to receive residential Flat under allotment letter was rightly assessed as long term capital gains. Interest expenses claimed as part of acquisition as regards computation of Indexation cost, matter remanded . (AY. 2014-15)
ACIT v. Gandhi Plastic Industries (2022) 98 ITR 87 (SN)(Mum) (Trib)

S. 45: Capital gains-Capital loss-Loss on sale of shares of joint venture companies-Capital loss incurred on sale of shares is allowable.

Held that the sale of shares of two joint venture companies were made by the assessee-company at ALP and that assessee has not received any amount over and above the sale price shown by it which has not been disputed by the AO, the capital loss incurred on said sale of shares is allowable. FollowedCIT v. Tainwala Chemicals and Plastics India Ltd. (2013) 215 Taxman 153 (Bom)(HC) , CIT v. Morarjee Textiles Ltd. [IT Appeal No. 738 of 2014, dt. 24th Jan., 2017 (Bom) (HC). (AY.2003-04)

Dy. CIT v. Piramal Enterprises Ltd. (2022) 216 TTJ 802 (Mum)(Trib)

S. 45: Capital gains-Capital loss- Indexation - Loss on redemption of shares- Not colorable device – Allowable as capital loss .

Held that the long-term capital loss arose to the assessee-company on redemption of preference shares of another company at par only on account of indexation which is statutorily provided to the assessee . The loss cannot be treated as a colourable device ,the long-term capital loss is allowable. (AY.2003-04)

Dy. CIT v. Piramal Enterprises Ltd. (2022) 216 TTJ 802 (Mum)(Trib)

S. 45: Capital gains – Insurance policy – Maturity value- Gains at time of extinguishment of rights - liable to be treated as capital gains - Cost of acquisition will be taken as amount paid towards premium minus 20 per cent of sum assured, which amount shall be treated as not part of investment, rather towards cost of hedging of risk under insurance policy .[S. 10(10D) , 48 , 56, 88(2A)]
During the year, the assessee received a sum of Rs. 18,14,072/- as maturity proceeds of life insurance policy from Bajaj Allianz Insurance Company. The assessee computed the LTCG

on the said maturity proceeds and offered a loss of Rs. 3,26,569/-.The Assessing Officer assessed the receipt as income from other sources . On appeal the CIT (A) allowed the premium paid by the assessee and taxed the net receipt as income from other sources . On appeal the Tribunal held that entire maturity value/gains at time of extinguishment of rights of assessee in said policy i.e. on date of maturity were liable to be treated as capital, gains however, while computing capital gains, cost of acquisition will be taken as amount paid towards premium minus 20 per cent of sum assured, which amount shall be treated as not part of investment, rather towards cost of hedging of risk under insurance policy. (AY. 2017 -18)
Bishista Bagchi v. Dy.CIT (2022) 195 ITD 31/ 219 TTJ 1096/ 218 DTR 313 (SMC)(Kol)(Trib)

S. 45: Capital gains – Transfer – Agricultural land - Partnership firm was not an agriculturist- Transfer is void ab initio – Not chargeable to capital gains tax . [S. 2(47),45(2), 45(3), Gujarat Tenancy and Agricultural Lands Act, 1948,S.2(8)]

The assessee purchased an agricultural land and entered into a partnership firm and transferred said land to partnership firm. The said land was transferred as stock in trade for a value of Rs. 22.41 crores. The Assessing Officer treated the value of Rs. 22.41 crores as the sale consideration and after deducting cost of acquisition to the assessee and stamp duty paid at the time of transfer of land in the name of the assessee, he worked out a short term capital gain chargeable to tax in the hands of the assessee for the year under consideration at Rs. 3.60 crores. Accordingly, addition to that extent on account of short term capital gain. On appeal, it was contended that the partnership firm VD not being capable of characterized as an agriculturist could not have owned the agricultural land and the only transfer of land which took place in this case after its acquisition by the assessee was by way of sale to BOI which happened on 12-5-2011 *i.e.* during the previous year relevant to the assessment year 2012-13. It was contended that the firm VD could not have purchased the agricultural land because only such firm can purchase agricultural land where all the partners are agriculturists. It was contended that any agreement/arrangement for transfer of agricultural land to a non-agriculturist was a void agreement and the same could not be recognized or given effect to being not permitted by law. The Commissioner (Appeals) deleted the addition made by the Assessing Officer on account of short term capital gain. On appeal by the Revenue the Tribunal held that since partnership firm was not an agriculturist, transfer of land in question by assessee to partnership firm was void ab initio and it could not give rise to any capital gain which was chargeable to tax in hands of assessee in year under consideration. Followed CIT v. Vithalbhai P.Patel (1999) 236 ITR 1001(Guj)(HC)(AY. 2010-11)

Dy.CIT v. Chandrakant L. Patel (2022)) 197 ITD 1/ 220 TTJ 965/ 220 DTR 247 (Ahd)(Trib)

S. 45 : Capital gains – Accrual – Unregistered sale deed – Registration –Reference to Departmental Valuation officer -Matter remanded - [S. 2(47), Registration Act, 1908, S. 17 , 19 , Transfer of Property Act, 1882, S. 53A]

The assessee claimed the receipt of three properties in the year 1990 from his father through an affidavit issued by self in that year, which was sought to be corroborated by an affidavit of his father issued in the year 1994. Sale deed dt. 7th Dec., 2010 that the assessee has signed it as one of the five co-owners and not as a 'consenting party'. There is no reference in the

registered sale deed to the alleged transfer of the three properties in favour of the assessee in lieu of his giving up share in the property in question. The contention of the asssessee that he was not a co-owner of the property in question at the time of execution of the registered sale deed in 2010 was not accepted. The fact that the assessee signed the registered sale deed as a co-owner and not as a consenting party and there is no legal document demonstrating the assessee giving up his share in the property in question in lieu of some other properties, the contention of the Authorised Representative that the assessee was not a co-owner of the property in question at the time of execution of the registered sale deed in 2010 was not accepted . Transfer of the property took place only on the execution of the registered sale deed in the year 2010 relevant to the assessment year under consideration and not in the year 2001 when the unregistered agreement to sell was executed. AO has not made any reference to the DVO as per the requirement of S. 50C(2) of the Act . Thee matter is remanded to the file of the Assessing Officer for redeciding the issue afresh as per law. (AY.2011-12)

Satish Zumberlal Firodia v. ITO (2022) 215 DTR 253 / 218 TTJ 836 (SMC) (Pune)(Trib)

S. 45 : Capital gains -Income from other sources - Compensation received for constructed property on compulsory acquisition of land- Assessable as a capital gain – Directed to treat 60 per cent as cost of acquisition- Reassessment was held to be valid . [S. 48 147, 148]

Held that Compensation received for constructed property on compulsory acquisition of land is assessable as a capital gain and directed to treat 60 per cent as cost of acquisition . (AY. 2007 -08)

Ambaben Jamubhai Patel v .ITO (2022) 219 TTJ 674 / 218 DTR 41 (Surat) (Trib)

S. 45 : Capital gains - Cost of acquisition – Paid to assignment holder – Assignment agreement not registered- Allowable as deduction- Matter remanded for verification . [S. 19, 144C]

Held that the assessee had considered to the assignment holders under the assignment agreement as cost of acquisition. The assessee had towards covered car park charges, corpus deposit, etc., and as assignment fee to the builder. Merely because the assignment agreement was not registered, the actual outflow from the hands of the assessee towards acquisition of the property could not be ignored for computing the capital gains. The assessee had claimed several items towards cost of improvement for which bills and invoices were submitted before the Assessing Officer. However, the break-up of the amount considered by the Assessing Officer as cost of acquisition Rs. 40,94,980 was not available on record. The Assessing Officer was to arrive at the cost of acquisition with proper break-up considering the actual amount paid by the assessee under the assignment agreement including amounts paid to the builder and stamp duty based on evidence and supporting documents submitted in this regard. The Assessing Officer was directed to verify the bills and documents with regard to cost incurred towards brokerage interiors, painting, etc., and consider these amounts for the purpose of arriving at the capital gains in accordance with law. .(AY.2019-20)

Ravi Kumar Tirupati Parthasarathy v. Dy. CIT (2022)99 ITR 70 (SN)(Bang) (Trib)

S. 45 : Capital gains -Compulsory Acquisition of property — Co -owners – Matter remanded [S. 54F , Right To Fair Compensation And Transparency In Land Acquisition, Rehabilitation And Resettlement Act, 2013 , Tamil Nadu Highways Act, 2001]

Held that the land belonged to the assessee along with other family members who were co-owners. The assessment of long-term capital gains should have been made in the exact proportion to the extent to which land belonged to each of them. There could not be a concession in law and the assessment should have been made on the right person and in the right proportion. Order set aside . That the land was compulsorily acquired under the Tamil Nadu Highways Act, 2001 and compensation received by the assessee for the land acquired under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 should have been assessed in accordance with Circular No. 36 of 2016, dated October 25, 2016 (2016) 388 ITR 48(St) . The Assessing Officer was directed to t examine afresh whether the assessee was entitled to exemption under section 54 or section 54F of the Act of the Act . (AY.2014-15)

E. Murugan v. ITO (2022)99 ITR 31 (SN)(Chennai) (Trib)

S. 45: Capital gains — Cost of acquisition — Value as on 1-4-1981 — Departmental Valuation Officer adopting rate of Rs. 21 Per square metre average of three sale instances of land — Assessee adopting rate at Rs. 25.69 Per Square metre — Reasonable and accepted . S. 49]

Held that the Departmental Valuation Officer had adopted the average of the three comparable and suggested the value at Rs. 21 per square metre. No details of various factors considered by the Departmental Valuation Officer were mentioned in his report. Similarly, in the report of registered valuer no factors affecting the land rates such as size, shape, situation or location were mentioned. There was a very minor difference of rates in the two reports. The Departmental Valuation Officer had referred to three sale instances of small pieces of land, but the size of land under dispute was large. If the average of the first and third comparables was taken, and the second comparable excluded for reasons of its size, the average of remaining two comparables came to Rs. 27.49. The assessee had already adopted the rate at Rs. 25.69 per square metre, which was reasonable and acceptable. (AY.2016-17)

Wagra Taluka Co-Operative Marketing and Processing Society Ltd. v. ITO (2022)99 ITR 8 (SN)(Surat) (Trib)

S. 45 : Capital gains -Shares- Purchased through broker on recognised stock exchange – Sold through stock exchange – Paid Securities Transaction Tax- Denial of exemption is not justified [S. 10(38)]

Held that the Department did not dispute that the shares were purchased through broker on recognized stock exchange, that the purchase consideration of shares was made through cheque, that the shares were duly dematerialised, that the shares were sold through stock exchange after the payment of securities transaction tax, that the transactions had been confirmed by brokers, that the payments were received through electronic clearing in the dematerialised account, that the inflow of shares was reflected in the account, that the shares were transferred through dematerialised account and the buyer was not known to the assessee, or that there was no evidence that the assessee had paid cash to the buyer or the broker or any other entry provider for booking long-term capital gains and shares were

purchased by the determined buyer. The income generated by the assessee could not be held bogus only on the basis of the modus operandi, generalisation, and assumptions of certain facts. In order to hold income earned by the assessee bogus, specific evidence had to be brought on record to prove that the assessee was involved in collusion with the entry operator or stock brokers for such an arrangements. Order of CIT(A) is affirmed . Referred PCIT v. Krishna Devi (Smt) (2021) 431 ITR 361 (Delhi)(HC) . (AY.2013-14)

ITO v. Mamta Rajivkumar Agarwal (Smt.) (2022)100 ITR 17 (SN)(Ahd) (Trib)

S. 45 : Capital gains – Sale of shares – Cash credits – Penny stocks – Accommodation entries – Survey – Search -No fault was found in the documents submitted by the assessee – Sale proceeds cannot be assessed as undisclosed income – Reassessment was quashed . [S. 10(38) 68, 132, 133 , 147 , 148]

Assessee filed its return of income claiming that long-term capital gain (LTCG) that arose on sale of shares of a company was exempt under section 10(38) .Same was allowed and an assessment order was passed . Subsequently, an information was received from Investigation Wing that during a survey/search it was found that shares sold by assessee was of penny stocks company utilised by share brokers for providing bogus accommodation entries by artificially raising price of such shares . On basis of same, Assessing Officer issued reopening notice against assessee - He further passed a reassessment order disallowing claim of exemption LTCG under section 10(38) and making addition of said amount to assessee's income under section 68 . Tribunal held that the assessee had furnished all evidences in form of bills, contract notes, demat statement and bank account to prove genuineness of transactions of purchase and sale of shares and Assessing Officer had not found such documents to be false, fictitious or bogus - Transactions were supported by debit note receipt, delivery challan and share certificate duly transferred in assessee's name , shares were sold through recognized stock exchange and assessee received consideration through proper banking channel . Prices of shares were determined by market forces and not solely on basis of financial statements . Evidences on record clearly showed that transactions of sale of shares by assessee were genuine, therefore, Assessing Officer was not justified in rejecting claim of assessee for exemption under section 10(38) and further making addition of sale proceeds of shares as undisclosed income of assessee under section 68. Tribunal also held that since the Assessing Officer had issued notice without forming an independent opinion on basis of certain tangible material that assessee's income had escaped assessment and mechanically relied upon information received from other source, impugned reopening notice was also quashed. (AY. 2013-14)

Sandipkumar Parsottambhai Patel v. ITO (2022) 217 TTJ 938 / 214 DTR 251 / 137 taxmann.com 373 ((Surat)(Trib)

S. 45: capital gains - Transferable development rights - Co-owned land- Cost of acquisitions - Assets having no cost of acquisition – Not chargeable as capital gains. [S. 2(14) 55 , 56]

Assessee, a co-owner of a piece of land, had entered into a development agreement with a developer to transfer him development rights in respect of land to construct new building by demolishing existing building on said land and received money consideration and carpet area in kind for same. Assessing Officer treated entire consideration received by assessee as capital gain . Held that since the assessee had not incurred any cost of acquisition in respect of such transferable development rights, consideration received by assessee on sale of said transferable development rights was not chargeable to tax under head capital gain . Followed CIT v. Sambhaji Nagar Co-op. Hsg. Society Ltd (2015) 370 ITR 325 (Bom)(HC) (AY. 2007-08)

ITO v. Kirit Raojibhai Patel (2022) 217 TTJ 704 / 141 taxmann.com 172 (Mum)(Trib)

S. 45 : Capital gains -Sale of shares- Long term capital gains – Survey – Penny stock - Denial of exemption is not valid [S. 10(38), 56,133A]

During year, assessee claimed long-term capital gain (LTCG) on sale of shares of company CCL and claimed exemption under section 10(38) on same . Pursuant to a survey operation, conducted upon premises of assessee, statement of assessee was recorded wherein he admitted that sale of shares of CCL was penny stock transactions but assessee was willing to pay tax on income thereon . On basis of same, Assessing Officer treated transaction of sale of shares of CCL by assessee and claim of exemption under section 10(38) as colourable transaction to evade tax and brought entire sale consideration to tax as income from other source . Addition was deleted by the CIT(A) . On appeal the Tribunal held that the assessee had produced substantial evidence in form of allotment of shares, sale of shares through ISE, a SEBI authorized broker, proof of payment of STT as also fact that these shares were in demat form - Other than statement recorded that he was willing to pay tax, there was no shred of evidence available with Assessing Officer to presume that transaction done by assessee was colourable device or attempt at evading tax by using unscrupulous methods of tax evasion . The assessee had complied with all requirement for claim of exemption under section 10(38) . Denial of exemption was held to be not valid . (AY. 2013-14)

ITO v. Bimala Devi Singhania (Smt) (2022) 217 DTR 17 / 219 TTJ 229 / (2023) 146 taxmann.com 449 (Cuttack)(Trib).
ITO v. Radheshyam Singhania 2022) 217 DTR 17 / 219 TTJ 229 / (2023) 146 taxmann.com 449 (Cuttack)(Trib).

S. 45 : Capital gains – Business income – Mutual funds and shares - Rule Of Consistency followed – Assessing the income as business income was deleted . [Circular No. 6 Of 2016, Dated 29-2-2016]

The Tribunal held that the the Revenue had consistently accepted the stand of the assessee that it was a trader of shares and mutual funds from the AYs 2005-06 to 2007-08, and the Assessing Officer deviated only in the AY 2008-09, which had been reversed by the Commissioner (Appeals). The Assessing Officer had again treated the assessee's income as capital gains from investments for the AY 2011-12, which the Commissioner (Appeals) reversed and held as business income, and this was not challenged by the Assessing Officer. Therefore, the findings of the Commissioner (Appeals) had crystallised. Following the

principle of the rule of consistency, since the fundamental facts permeating in the earlier years had not changed, and when a certain position had been accepted by the Department, then without any change in the law, the consistent position or finding could not be allowed to be changed. Assessing the income as business income was deleted and directed the gain to be assessed as capital gain . (AY. 2008-09, 2012-13 to 2014-15)

Steel Authority of India Employees' Co-Operative Credit Society Ltd. v. ACIT (2022)96 ITR 599 (Kol)(Trib)

S. 45 : Capital gains – Registration of sale deed – Possession not handed over – Matter remanded to CIT(A) [S. 2(47)(v)]

Assessee claimed that the property had not been handed over in spite of registration owing to non-receipt of the amount .The purchaser had paid stamp duty however the purchaser had not taken any steps to occupy the property as per the documents.. No enquiries had been conducted from the company to confirm whether it fulfilled or defaulted the payments as mentioned in the agreement. Under these circumstances, the Department had to confirm that the assessee had indeed received monies from the company. Matter remanded to the file of CIT (A) for further investigation . (AY.2011-12)

ACIT v. Amarjeet Singh (Decd.) (2022)95 ITR 62 (SN)(Delhi)(Trib)

S. 45 : Capital gains-Division of property to avoid family dispute-Capital gains is taxable in the hands of Individual and not HUF [S. 4, 171]

Assessees Seema Bhattacharya and Jharna Bhattacharga were wives of kartas Shri Baskar Bhatachrya (Husband of JB) Shankar Bhatachrya (Husband of SB) and who were brothers. Assessees sold their agricultural land and purchased an immovable property from sale consideration. Assessee Jharna Bhattacharga claimed that land sold belonged to HUF. Assessing Officer denied the claim and regarded capital gain as assessable in hands of assessee as an individual. Commissioner (Appeals) held that no capital gain could arise in hands of assessee as same was property of respective HUFs. On appeal the Tribunal held that land was originally held by father of kartas which was divided into three parts and there was nothing to show that income from said property was being returned as family income. Merely because land was divided, with a view to avoid family dispute, by father between himself and his two sons, would not by itself make it a family property. Capital gains was rightly assessed as an individual property. (AY. 2009-10)

ITO v. Seema Bhattacharya. (2022) 197 ITD 241 (Jabalpur) (Trib.)

S. 45 : Capital gains-Sale cum development agreement dt. 21-10-2010-Possession of property to transferee after obtaining intimation of disapproval (IOD)-IOD received on 15-4-2013-Capital gain is not taxable in the assessment year 2011-12 [S.2(47), Transfer of Property Act, 1882, S.53A]

Assessee entered into sale cum development agreement on 21-10-2010 with developer cum purchaser for transfer of his property. Assessing Officer held that possession of property had been handed over by assessee to developer on execution of agreement dated 21-10-2010 and, therefore, transfer of property had taken place in view of section 2(47)(v) read with section 53A of Transfer of Property Act, 1882 as on 21-10-2010. Accordingly taxed the long term capital gains in the assessment year 2011-12. CIT (A) confirmed the addition. On appeal, the Tribunal held that as per terms of agreement dated 21-10-2010, possession of property to transferee will be only after he obtained intimation of disapproval (IOD) from Municipal Corporation of Greater Mumbai (MCGM) and IOD was issued by MCGM only on 15-4-

2013, i.e., in assessment year 2014-15 and thereafter only assessee needed to hand over possession of property to developer. Accordingly, there was no transfer of property as on 21-10-2010 hence no capital gain could have been taxed in hands of assessee in assessment year 2011-12.

Mahesh D. Saini. v. ITO (2022) 197 ITD 513 (Mum) (Trib.)

S. 45 : Capital gains-Investment in shares-High volume and frequency of transactions-Shares purchased on delivery basis-Accepted as capital gain for number of years-Assessable as capital gains [S. 2(29A) 2(42A), 10(38), 28(i)]

Held that mere high volume of transactions & utilization of borrowings in purchase of shares could not alter assessee's consistent treatment of shares purchased on delivery basis as investment, which was even accepted by revenue for several years. Directed to accept the gain as capital gains. (AY. 2010-11)

Yamini Khandelwal. (Smt.) v. ACIT (2022) 197 ITD 520/ 220 TTJ 485 / 219 DTR 201 (Kol) (Trib.)

Suraj Khandelwal v. ACIT (2022) 197 ITD 520/ 220 TTJ 485/ 219 DTR 201 (Kol) (Trib.)

S. 45 : Capital gains-Sale of property given as security as guarantor by director-Collateral security as a guarantor-Taxable in the year in which land was transferred to assignee to sale to recover loan for bank-Year of taxability was not examined-Matter remanded-Court made observation that the law may be amended to recover the tax from the borrower. [S. 2(47), 48]

Assessee was a director of company ASCL. Assessee gave a land owned by it as collateral security as a guarantor to a bank against loan taken by ASCL. Bank recalled credit facilities given to ASCL and invoked personal guarantee given by assessee. Land ofassessee which was offered as collateral security was assigned to ARCIL for further sale to recover loan amount for bank. land was sold by ARCIL to company ADPL. Assessing Officer held that market rate of land as per stamp duty valuation was at much higher amount than LTCG shown by assessee. AO taxed the entire amount of LTCG to tax in hands of assessee.The year of taxability was not examined by the AO. Matter remanded-Court made observation that the law may be amended to recover the tax from the borrower.(AY. 2006-07)

Per court : With the increasing number of cases in which recovery measures are enforced by selling properties, held by bankers and ARCs as collateral securities, it is time that the Government seriously considers protecting its legitimate interests by ensuring some mechanism to ensure that tax liability on capital gains is duly recovered from borrower whose property is sold and when it is not possible to do so on account of borrower's genuine financial difficulties from person who receives proceeds of sale of securitized assets. (AY. 2006-07)

Abbasbhai A. Upletawala v. ITO (2022) 197 ITD 548 /220 TTJ 880 /220 DTR 137(Mum) (Trib.)

S. 45 : Capital gains-Sale of shares-Non-compete fee-Sale consideration cannot be partly attributable as business income [S. 28(va)]

Assessee sold shares held in KLIPL and received consideration. The AO assessed the consideration as business income. CIT (A) attributed 5 percent of consideration under section 28(va) of the Act. Tribunal held that since business was being carried out by KLIPL and assessee was simply a shareholder and not directly into business, assessee had rightly declared income under head capital gains therefore, finding of Commissioner (Appeals) attributing 5 per cent of consideration received by assessee as income covered by section 28 (va) was set aside. (AY.2016-17)
Pranay Godha. v. ACIT (2022) 197 ITD 767 (Mum) (Trib.)

S. 45 : Capital gains-Joint Development Agreement-Transfer-Development of a plot of land-Transfer complete on execution of IDA-Capital gains is rightly assessed by the Assessing Officer. [S. 2(47)] The assessee entered into a Joint Development Agreement (JDA-cum-GPA with a developer for development of a plot of land owned by it. Assessing Officer after considering share of assessee in project at 40 per cent determined consideration and transfer of land at certain amount and after deducting indexed cost of acquisition, determined LTCG at certain amount. Assessee contended that capital gain could not be added during relevant assessment year since she didn't get possession of flats during relevant assessment year. Commissioner (Appeals) held that transfer was complete on execution of JDA, and, thus, assessee was liable to capital gain tax in relevant assessment year 2016-17 when JDA was entered into between assessee and developer for development of land. On appeal the Tribunal affirmed the order of the Assessing Officer. (AY. 2016-17)**Naga padmaja vangara (Smt.) v. ITO (2022) 197 ITD 665 (Hyd) (Trib)**

S. 45 : Capital gains-Joint Development Agreement-Transfer-Development of a plot of land-Transfer complete on execution of IDA-Capital gains is rightly assessed by the Assessing Officer. [S. 2(47)]
The assessee entered into a Joint Development Agreement (JDA-cum-GPA with a developer for development of a plot of land owned by it. Assessing Officer after considering share of assessee in project at 40 per cent determined consideration and transfer of land at certain amount and after deducting indexed cost of acquisition, determined LTCG at certain amount. Assessee contended that capital gain could not be added during relevant assessment year since she didn't get possession of flats during relevant assessment yea. Commissioner (Appeals) held that transfer was complete on execution of JDA, and, thus, assessee was liable to capital gain tax in relevant assessment year 2016-17 when JDA was entered into between assessee and developer for development of land. On appeal the Tribunal affirmed the order of the Assessing Officer. (AY. 2016-17)

Naga padmaja vangara (Smt.) v. ITO (2022) 197 ITD 665 (Hyd) (Trib)

S. 45 : Capital gains-immovable property-Agreement to sell-transfer-Possession was not given-Not liable to capital gains tax [S. 2(47)]
Held that merely an agreement to sell was entered into by assessee and possession of land was never given would not result in transfer of asset and no capital gains would arise in assessment year 2008-09.
Godha Realtors (P.) Ltd. v. ACIT (2022) 194 ITD 31 (Bang) (Trib.)

S. 45 : Capital gains-Conversion of asset into stock-in-trade-Land converted in to stock in trade-Capital gains was to be computed up to date of conversion into stock-in-trade

and for period thereafter sales realization of stock-in-trade over fair market value of land was to be assessed as business income. [S. 28(i), 45(2)]

Assessee was allotted 12 acres of industrial land for hospital project on lease-cum-sale basis. Assessee used only 3 acres of land in two years and was incurring losses and was also bearing interest charges on loan taken to buy said land, hence, it sold land in small plots. Assessee offered sale consideration received for sale of land as long-term capital gains (LTCG). Assessing Officer held that sale of land was business transaction which was used to recover business loss and treated sale consideration received as business income. CIT(A) affirmed the order of the Assessing Officer. On appeal the Tribunal held that capital asset (land) which was so purchased initially was converted or treated as stock-in-trade of business by assessee. Accordingly the assessee was to be granted benefit of section 45(2) and capital gains was to be computed up to date of conversion into stock-in-trade and for period thereafter sales realization of stock-in-trade over fair market value of asset (land) was to be assessed as business income. (AY. 2014-15)

Futuristic Diagnostic Imaging Centre (P.) Ltd. v. ITO (2022) 194 ITD 532 (Bang) (Trib.)

S. 45 : Capital gains-Transfer of property in the preceding year –Transfer of property took place on execution of sale deed in the preceding year, the amount of capital gains cannot be charged to tax for the A. Y. 2009-10[S. 2(47)(i), 147, 148, Transfer of Property Act,1882 S. 53A, Indian Registration Act, 1908, S. 17,, 49, 171(IA)

The Tribunal recalled the original order passed u/s 254(1) of the Act for the limited purpose of dealing with the contention about the correct year of taxability. The Tribunal observed and concluded that in view of the amended provisions of Section 17(1A) and 49 of the Registration Act as amended by the Registration and Other related Laws (Amendment) Act, 2001 and consequent changes made in Section 53A of Transfer of Properties Act r.w. s. 2(47)(v) of the Income Tax Act, the transfer of the property in question took place in the year of execution of sale deed and not in the year of its registration. In the present case, the sale deed was executed on 15–12–2007 and accordingly, it was held that the year of chargeability of tax the A. Y. 2008–09 and not the A. Y. 2009-10. Refer CIT v. Balbir Singh Maini (2017) 398 ITR 531 (SC) (AY. 2009-10)

Beena Shammi Choudhari (Smt) v. ITO(2022) 64 CCH 119/ 216 TTJ 888 / 214 DTR 185 (SMC) (Pune) (Trib)

S. 45: Capital gains –Transfer-Redemption-Indexation-Redemption of preference shares is a sale and also transfer of relinquishment of asset by share holder-Assessable as capital gains and not as income from other sources [S. 2(47), 48, 56]

The assessee considered the redemption of preference shares including the premium was considered as capital gains. The Assessing Officer held that the redemption of preference shares cannot be treated a transfer and held that premium on preference shares assessable as income from other sources and not as capital gains. On appeal the CIT(A) held that premium is also part of full consideration received hence assessable as capital gains. On appeal by the Revenue, the Tribunal affirmed the order of the CIT(A). Referred Vania Silk Mills (P)Ltd v.CIT (1991) 191 ITR 647 (SC) Anarkali Sarabhai v.CIT (1997) 224 TR 422 (SC), CIT v. Enam Securities (P)Ltd (2012) 345 ITR 64 (Bom)(HC). (AY. 2011-12)

Dy.CIT v. Acquire Services Pvt Ltd (2022) 93 ITR 613 (Delhi)(Trib)

S. 45 : Capital gains –Short term-Transfer-Joint Development Agreement (JDA)-Construction of an apartment project-Merely a license for developer to enter property-Provisions of section 53A of Transfer of Property Act and provisions of section 2(47)(v) would not be applicable to JDA-Not liable to capital gains tax-Failure to file JDA agreement-Reassessment notice is valid [S. 2(47)(v)), 147, 148, Transfer of Property Act,1882, S. 53A]

Assessee builder had entered into a Joint Development Agreement (JDA) with developer for construction of an apartment project in respect of a land owned by it. Assessing Officer took view that assessee had purchased land for investment purposes and held same as capital asset and thus, by invoking provisions of section 2(47)(v), Assessing Officer held that there was transfer of asset within meaning of section 53A of Transfer of Property Act and accordingly, computed short term capital gain and assessed same in hands of assessee. On appeal the Tribunal held that what was given was not possession contemplated under section 53A of Transfer of Property Act, 1882, but was merely a license for developer to enter property. The assessee had given permissive possession and not legal possession as contemplated within meaning of section 53A,therefore, provisions of section 53A of Transfer of Property Act and provisions of section 2(47)(v) would not be applicable to JDA and thus, capital gains assessed in hands of assessee under section 2(47)(v) were liable to be deleted. Reassessment notice is held to be valid. (AY. 2006-07)
Anugraha Shelters (P) Ltd. v. DCIT (2022) 193 ITD 119 (Bang) (Trib.)

S. 45 : Capital gains-Transfer-Joint development agreement-Neither any consideration received nor handed over possession of immoveable property during relevant assessment year-Not liable to be assessed as capital gain [S. 2(47)(v), 45(2), Transfer of Property Act, 1882 S. 53A]

Assessee had entered into a development agreement, to extend her land for joint development with a company. Development agreement provided that an amount of Rs. 7 crores was to be paid to assessee and possession of property was to be handed over to developer by assessee. Assessing Officer held that as per section 2(47)(v) read with section 53A of Transfer of Property Act said transaction had culminated into transfer of immovable property thereby attracting long term capital gain. CIT(A) allowed the appeal. On appeal by the Revenue the Tribunal held that the assessee had only entered into a joint development agreement with promoter and when her share in developed property was sold, she would be benefitted by gain or loss.On facts, assessee would not be liable to be taxed for entering into a joint development agreement when neither assessee had received any consideration nor handed over possession of immovable property during relevant assessment year. (AY. 2013-14)
DCIT v. Nagam Suguna (2022) 193 ITD 436 (Hyd) (Trib.)

S. 45 : Capital gains-Sale of shares-Forming part of a lot purchased-Assessable as capital gains and not as business income.[S. 28(i)]

Tribunal held that surplus arising from sale of shares (forming part of a lot purchased by assessee) had been subjected to tax as STCG, then, by way of an implication it could be inferred that said entire lot of shares was purchased by assessee with an intention to hold

same as a capital asset, hence, balance shares would also be given a similar treatment (AY. 2008-09)
Nalin V. Shah. v. ACIT *(*2022) 192 ITD 29 (Mum) (Trib.)

S. 45 : Capital gains-Registered JDA along with registered GPA for development of property-Actual receipt of profits is not relevant-Liable to capital gains tax on transfer of capital asset [S. 2(47 (v), Transfer of Property Act,1882, S. 53A]

The assessee executed registered JDA with developer along with registered GPA for development of property which authorised developer a provisional permission to enter in to land, authorising them to develop, execute sale deed or other conveyance in respect of the impugned property and authorised to sell constructed area of both assessee as well as developer. The Assessing Officer held that entire consideration as referred in the agreement is liable to tax capital gains, though the entire consideration was not received. On appeal CIT(A) affirmed the order of the Assessing Officer. On appeal the Tribunal held that since assessee had a right to receive profit in assessment year under consideration, it would be liable to pay capital gains tax on transfer of capital asset and actual receipt of profit would not be a relevant consideration. (AY. 2007-08)
Jaico Automobile Engineering Company (P.) Ltd. v. DCIT (2022) 192 ITD 147 (Bang) (Trib.)

S. 45(3) : Capital gains-Transfer of capital asset to firm –Firm-Partner-Transfer at book value-Revaluation of asset by firm-Transfer of land to partnership firm -Only value agreed between partners at which asset is transferred by a partner to firm has to be considered-Addition cannot be made on notional basis.[S. 10(2A), 147, 148]

The assessee was one of four partnership in the firm. The assessee along with other partners purchased a land which was transferred to the firm as current asset. Land was transferred to the firm at book value and the account of the partner was credited. The firm shown the said asset under the heading current assets in the balance sheet. The firm revalued the assets in their books of account. The assessment of the partner was reopened on the ground that the land was undervalued while introducing the land to the firm. On appeal the Tribunal held that reassessment was not valid. On merit the Tribunal held that partners transferred the land to the firm by way of capital contribution and value was credited to their capital account. There was no profit in the hands of partners upon transfer of land to the firm. The Tribunal also held that the partners transferred the asset to the firm at book value and the section 45(3) is applicable to only in respect of a capital asset. On the facts, the partners transferred current asset and not a capital asset. The asset was transferred in the financial year March 31, 2006. The Assessing Officer invoked the provision of section 45(3) in the assessment year 2008-09. The Tribunal also held that section 45(3) does not seek to substitute by any other figure the value agreed between the partners at which the asset is transferred by a firm. The Tribunal quashed the reassessment proceedings and also decided the issue on merit in favour of assesee. On appeal, High Court affirmed the order of the Tribunal.Referred, Chainrup Sampataram v. CIT (1953) 24 ITR 481 (SC) (AY. 2008-09)

PCIT v. Orchid Griha Nirman Pvt Ltd (2022) 285 Taxman 368 (Cal)(HC)
Editorial : Order of ITAT, in ITO v. Orchid Nirman (P)(Ltd (2016) 161 ITD 818(Kol)(Trib), affirmed.

S. 45(4) : Capital gains-Distribution of capital asset-Transfer-Dissolution of firm-Revaluation of assets and credit to capital accounts of partners-Introduction of new partners-Withdrawal of credit from capital account-Otherwise-Firm is liable to pay capital gains tax [S. 2(47)(ii), 47(ii), 50]

The assessee-firm originally consisted of four partners. Under a family settlement in 1991, the share of one of the existing partners was reduced and three new partners were admitted. Thereafter, three partners retired and reconstituted the firm with four partners. On November 1, 1992, the firm was again reconstituted and three more partners were admitted. The reconstituted partnership deed mentioned that two partners had decided to withdraw part of their capital. On January 1, 1993, the assets of the firm were revalued and the amount was credited to the accounts of the partners in their profit-sharing ratio. Some of the existing partners withdrew part of their capital. The Assessing Officer held that the revaluing of the assets, and subsequently credit to the respective partners' capital accounts constituted a transfer liable to capital gains tax under section 45(4) of the Act. As land and building were involved, and the assessee had claimed depreciation on the building, the Assessing Officer assessed the short-term capital gains under section 50. The Commissioner (Appeals) confirmed the addition but the Tribunal set it aside observing that revaluation of the assets and credit to the partners' accounts did not involve any transfer. The High Court dismissed the Department's appeals. On appeal by the Revenue, allowing the appeals,the Supreme Court held that the assets of the firm were revalued and the revalued amount was credited to the accounts of the partners in their profit-sharing ratio and the credit of the assets' revaluation amount to the capital accounts of the partners could be said to be in effect distribution of the assets valued to the partners. During the years, some new partners came to be inducted by introduction of small amounts and the newly inducted partners had huge credits to their capital accounts immediately after joining the partnership, which amount was available to the partners for withdrawal and in fact some of the partners withdrew the amount credited in their capital accounts. Therefore, the assets so revalued and the credit into the capital accounts of the respective partners could be said to be "transfer" and which fell in the category of "otherwise" and therefore, the provisions of section 45(4) inserted by the Finance Act, 1987 with effect from April 1, 1988 would be applicable.(AY.1993-94, 1994-95)

CIT v. Mansukh Dyeing and Printing Mills (2022)449 ITR 439/220 DTR 189/329 CTR 673 / 145 taxmann.com 151/ / (2023) 290 Taxman 354 (SC)

Editorial: Order of Bombay High Court, CIT v. Mansukh Dyeing and Printing Mills (ITA Nos 1074 and 1147 of 2009 dt. 24-6-2013 (Bom)(HC), reversed.

S. 48 : Capital gains-Computation-Share purchase agreement-Full value of consideration-Tax component-Allowable as deduction while computing capital gains [S. 45]

Assessee and her husband entered into share purchase agreement to sell her shares in four companies. In the computation, the assessee calimed that consideration agreed between parties for sale of its shares was Rs. 2.70 crores minus tax component of Rs. 90.74 lakhs. Assessee had agreed to pay tax component as per clause 7(1) of share purchase agreement. She claimed deduction under 'capital gains' on tax component under section 48 of the Act. Assessing Officer disallowed the claim. Commissioner (Appeals) allowed appeal in part and appeal before Tribunal, had been dismissed. On appeal, the High Court held that value of shares would be amount agreed between parties excluding tax components but tax component should be distributed among both sellers. Therefore, assessee would be entitled for deduction of only 50 per cent of tax component proportionate to her shareholding. Relied on CIT v.

Gillanders Arbuthnot & Co (1973) 87 ITR 407 (SC), CIT v. George Henderson & Co Ltd (1967) 66 ITR 622 (SC)

Durga Kumari Bobba v. Dy. CIT (2022) 288 Taxman 695/ 220 DTR 428 (Karn)(HC)

S. 48: Capital gains-Computation-Sale of shares-Expenditure incurred in connection with transfer of capital asset-Sale Of Shares-Amount paid in terms of agreement-Allowable as deduction. [S. 45]

Held that the Tribunal had recorded that the terms of compromise indicated that the payment of Rs. 2.66 crores was in connection with the transfer of capital asset. The compromise terms stated that the parties had amicably agreed upon certain terms and the assessee had paid the amount. The DHFL had waived all indemnities, liabilities and claims. The payment of Rs. 2.66 crores had nexus with the transfer of shares as per the terms of compromise. It was deductible.(AY.2004-05)

CIT v. Ing Vysya Bank Ltd. (2022) 448 ITR 94 (Karn)(HC)

S. 48 : Capital gains –Sale consideration-Fair market value deemed to be full value of consideration in certain cases-Transfer of a plot of land-Joint Development agreement-Not ascertainable-Guidance value of land would be appropriate mode to determine full value of consideration-Provision of section 50D came in to force with effect from 1-4-2013 is not applicable for the year under consideration. [S. 45, 50D]

The assessee was entitle to receive 26% of the constructed area as per the terms of the JDA. The Assessing Officer computed the long term capital gains qualifying the consideration as the cost of consideration of 26% of the constructed area and allotted to the assessee as per the JDA dated 11-5-2009 treating the cost of construction as the full value of consideration. On appeal, the CIT(A)held that the guidance value as the full value of consideration, which was affirmed by the Tribunal. On appeal by the Revenue, the High Court held that when the consideration is not ascertainable,guidance value of land would be appropriate mode to determine full value of consideration. Court also held that provision of section 50D came in to force with effect from 1-4-2013 is not applicable for the year under consideration. Appeal of Revenue was dismissed. (AY. 2006-07, 2010-11)

PCIT v. CPC Logistics Ltd (2022) 286 Taman 38 (Karn)(HC)

S. 48 : Capital gains-Computation-Full value of consideration-Adoption of fair market value based on guidelines issued by Government is justified [S. 45,50D]

The assessee entered into a joint development agreement with contractors for development of 84 cents of land. Under the joint development agreement dated October 21, 2010, the assessee was entitled to 30 per cent. of the total saleable super built up area. In the supplementary joint development agreement dated May 26, 2011 the sharing ratio was revised to 26.89 per cent. and 73.11 per cent. between the assessee and the developer. For the assessment year 2011-12 the Assessing Officer brought to tax Rs. 5,68,19,443 as capital gains by adopting the cost of construction as sale consideration based on the joint development agreement between the assessee and the contractors. The assessee preferred an appeal before the Commissioner (Appeals) which was allowed directing the Assessing

Officer to adopt the fair market value based on the Government records as deemed consideration for the purpose of calculation of capital gains. The Revenue preferred an appeal before the Tribunal. The Tribunal, upholding the order of the Commissioner (Appeals), held that the variation of the capital gains should be appropriate to the adopt fair market value as deemed consideration, but not the cost of construction. On appeal to the High Court dismissing the appeal, the court held that the entire issue was revenue neutral. The Tribunal observed that even if any capital gains accrued in favour of the assessee after receiving possession of the property, that would also be subject to capital gains tax. It was thus clear that in the event the assessee were to dispose of the built up area, or any part thereof, after receipt thereof from the developer, it would have to necessarily pay tax on the capital gains in the year of such sale and the cost of such built up area was to be reckoned for the purpose of indexation which would be proportionate to the fair market value of land.
The Court also held that the Assessing Officer had adopted the rate of Rs. 1600 per square feet merely based on the letter given by the developer which was not supported by any particulars. Determination of the full value of consideration by the Assessing Officer based on the letter of the developer was not appropriate. Section 50D was inserted by the Finance Act, 2012, with effect from April 1, 2013. Though section 50D had come into effect from April 1, 2013, it threw some light on the mode of computation under section 48. In the circumstances the guidance value of the land or the guidance value of the building would the appropriate mode to determine the full value of consideration. Referred CIT v. George Henderson and Co Ltd (1967) 66 ITR 622 (SC). (AY.2011-12)

PCIT v. Sarojini M. Kushe (Smt) (2022)442 ITR 327/ 210 DTR 172/ 286 Taxman 253 (Karn) (HC)

S. 48 : Capital gains – Computation - Borrowings (ICDs) for acquisition of shares-Interest paid – Indexed interest cost - Added to the cost of acquisition .[S. 45]
Assessee borrowed money in form of interest bearing ICDs and used said money was utilised for acquire shares . The Assessing Officer disallowed the interest claim of on account of indexed interest cost . Tribunal held that since interest paid on borrowings for acquisition of shares was not claimed as deduction under business head, same would fall for deduction under section 48 and would be considered as part of cost of acquisition while computing capital gains on sale of shares. (AY. 2013-14)
Zuari Investments Ltd. v. ITO (2022) 209 DTR 313 / 215 TTJ 515 / 139 taxmann.com 92 (Delhi) (Trib)

S. 48 : Capital gains-Computation-cost of acquisition-Fair market value on 1-4-1981-Fair market value of net assets-Shares were acquired by assessee before 1-4-1981-Option to substitute its cost of acquisition by fair market value of net assets as on 1-4-1981 is with assessee. [S.2(22B), 49]
Held that as regards shares which were acquired before 1-4-1981, assessee had option to substitute its cost of acquisition by fair market value as on 1-4-1981. Mere fact that shares were issued after 1-4-1981 also at face value could not negate its fair market value. Assessing Officer was directed to adopt valuation computed on basis of fair market value of net assets. (AY. 2012-13)
Sushiladevi R Somani. v. ACIT (2022) 197 ITD 316/ 219 TTJ 633 / 217 DTR 417 (Mum) (Trib.)

S. 48 : Capital gains-Computation-Compensation-Interest for clearance of encumbrance on land-99 per cent of shareholding of property was with co-owners-Compensation is made to self-Not allowable as deduction [S. 45]

Assessee was co-owner of land which was sold vide registered sale deed and share of assessee was 30.93 per cent. The assessee claimed interest paid on security deposit to clearing encumbrance on property sold and compensation paid to SAE and BJT for vacating property. The AO disallowed the claim. Held that the nature of payment which had been claimed to be compensation to related parties was nothing but compensation made to self since 99 per cent of share/shareholding is with co-owners including assessee. Accordingly, the disallowance is affirmed (AY. 2005-06)

DCIT v. Jayapal Sanjay. (2022) 197 ITD 720 (Chennai) (Trib.)

S. 48 : Capital gains-Computation-Debentures of company-Bonus debentures-Reinvested-Reinvested out of dividend would be considered as cost of acquisition of debentures [S. 2(22)]

The assessee was allotted debentures of company, Blue Dart Express Ltd in respect of which cost of acquisition was claimed by assessee. Assessing Officer denied the claim on ground that cost of acquisition of these debenture would be taken as NIL because these were bonus debentures and assessee had not incurred any cost for its acquisition. CIT (A) held that debentures were in nature of dividend and cost of acquisition was to be treated as Nil while computing capital gain arising from sale of these debentures. Held that debentures were allotted to assessee in consideration of dividend which was received by merchant banker on behalf of assessee and was reinvested in debentures issued by company, thus, amount reinvested out of dividend in debentures would be considered as cost of acquisition of said debentures. (AY. 2015-16)

JP Morgan Funds. v. DCIT (IT) (2022) 196 ITD 114 / 219 TTJ 364/ 217 DTR 225 (Mum) (Trib.)

S. 48 : Capital gains-Computation-Full value of consideration-Joint development agreement-Co-owner-Indexation was allowed-Consideration plus the cost of two flats was considered as the full value of the consideration received from the transfer of property.[S. 45, 54]

The Assessee was a co-owner of a residential house property with his father and his wife in the ratio of 42.50, 15 and 42.50 per cent respectively. They entered into a joint development agreement with one developer, who had agreed to construct 4 flats on said property and give a consideration of Rs. 2.25 crores as non-refundable deposit along with 2 flats with car parking in lieu of 50 per cent undivided share (UDS) of said land. As per an internal agreement between parties, non-refundable deposit was directly paid to assessee's father and one flat each was allotted and registered in favour of assessee and his wife. Assessee filed his return of income considering value of only one flat allotted to him as long term capital gain (LTCG). The AO recomputed the long term capital gain by considering the cost of two flats plus the non-refundable deposit of Rs. 2. 25 crores from transfer of property as full value of consideration received. considered 42.50 percent of share in hands of the assessee and further allowed deduction for indexed cost of acquisition and deduction under section 54 of the Act. on appeal the CIT(A) up held the order of the Assessing Officer. On appeal the Tribunal held that when a property was transferred, consideration received or accrued as a result of transfer should be taken into account according to their share in the property and not

as per internal arrangement between parties. Since co-owners of the property had a specified share under JDA, a non-refundable deposit received from the developer was also required to be taken in proportionate to their share in property irrespective of their internal arrangement. Accordingly, the full value of consideration was to be determined by considering the cost of two flats plus the non-refundable security deposit received from the developer and accordingly, LTCG was to be computed proportionate to share of parties on said amount. (AY. 2011-12)

Dr. E.S. Krishnamoorthy. v. ITO (2022) 195 ITD 165 (Chennai) (Trib.)

S. 48 : Capital gains-Computation-Cost of acquisition of asset-Interest paid on borrowed capital-Included in cost of acquisition.[S. 45, 49]

Held that after examining the balance-sheet, profit and loss account and other documents submitted by the assessee, held that the interest expenditure had been capitalised and not claimed as revenue expenditure, which was not disputed by the Assessing Officer in his remand report. There was no infirmity in the order passed by the Commissioner (Appeals).*(*AY. 2008-09)

Dy. CIT v. Balaji Hotels and Enterprises Ltd. (2022) 94 ITR 24 (Trib)(Chennai)(Trib)

S. 48 : Capital gains-Computation-Sale of shares-Fair market value as on 1-4-1981-Capital asset-Valuation based on valuation report-Department is not justified in rejecting the valuation adopted on the basis of approved valuer-On the peculiar facts of this case the Tribunal uphold the plea of the assessee, and direct the Assessing Officer to adopt the valuation of Rs 3,833 computed by the assessee on the basis of the fair market value of the net assets [S. 2(22B) 45, 49, 55]

During the relevant previous year, the assessee sold 930 equity shares held by her in Somani & Co Pvt Ltd (SCPL, in short) for a consideration of Rs 8,46,30,000, but these shares were acquired in three lots, out of which the first lot of 225 equity shares was admittedly acquired prior to 1st April 1981. While computing the capital gains on the sale of these shares, the assessee took the cost of acquisition of Rs 100 each for the SCPL equity shares acquired after 1st April 1981, but, so far as the 225 equity shares acquired prior to 1st April 1981 are concerned, the cost of acquisition was taken as fair market value as on 1st April 1981 which was stated to be Rs 3,833. This valuation was done by dividing the net fair market value of the assets of the SCPL (i.e. Rs 7,66,80,100) by the total number of equity shares (i.e. 20,000). The fair market value of the shares, as on 1st April 1981, was duly supported by the report of Shah & Shah, Government Approved Valuers, for the valuation of land held by the company-which was its most valuable asset. The Assessing Officer, however, rejected this claim which was affirmed by the CIT(A). On appeal the Tribunal held that the intrinsic value of the shares on the basis of net assets divided by the total number of equity shares is most appropriate. On given the fact that the most important asset held by this company, as a perusal of the valuation report read with the balance sheet-copies of which is placed before us in the paper book, is land, and the value of this asset is a dominant factor in the valuation of the entire company, the course adopted by the assessee does appeal to us. The provisions of Rule 1 D, so much relied upon by the learned CIT(A), were no longer in existence at the

relevant point of time, and nothing, therefore, turns on the same, nor can these provisions, therefore, be pressed into service as of now. No doubt, the provisions of rule 1 D of the Wealth Tax Rules could, at best, be of good guidance, but that is still a step short of the legal force. In any event, if the Assessing Officer had any doubts on the correctness of valuation, it was open for him to refer the matter to the Departmental Valuation Officer, but that exercise has not been done, and the relevant financial period is more than a decade old. On the peculiar facts of this case the Tribunal uphold the plea of the assessee, and direct the Assessing Officer to adopt the valuation of Rs 3,833 computed by the assessee on the basis of the fair market value of the net assets. (AY. 2012-13)

Sushiladevi R Somani v. ACIT (2022) 197 ITD 316 (Mum) (Trib)

S. 48 : Capital gains-Cost of improvements-Amount spent on property to make it habitable is allowable as deduction-Amount spent on refrigerator, air conditioner LED, TVS furniture, dining table etc are personal effects-Not eligible for deduction-Interest on housing loan-Matter remanded to the Assessing Officer [S. 24, 45, 133(6)]

The assessee sold the flat and offered the capital gains but also claimed certain expenditure and interest paid on housing loan adding to cost of acquisition and cost of improvement of property and indexation on said amount. The Assessing Officer issued notice u/s133(6)) of the Act to the suppliers of materials and no reply was received. The Assessing Officer denied the deduction. On appeal the CIT(A) up held the addition on the ground that the expenditure incurred only on account of personal effects hence not eligible deduction. On appeal the Tribunal held that the amount spent on cost of improvements to make the property habitable allowable as deduction and indexation while computing the capital gains however the amount spent on personal effects such as refrigerator, air conditioner LED, TVS furniture, dining table etc are not eligible for deduction. As regards interest capitalised the matter remanded to the file of Assessing Officer to verify whether the interest was claimed as deduction u/s 24 of the Act for denovo verification in accordance with law. Referred Shrinivas R.Desai v. ACT (2013) 155 TTJ 743 (Ahd)(Trib) (ITA No.1200& 1201/ Mum/2020 /M/2020 dt.14-7-2022 (SMC) (AY. 2010-11)

Komal Gurumuk Sangtani v. ITO (Mum) (Trib) www.itatonlime.org

Gurumukh I.Sangtani v. ITO (Mum) (Trib) www.itatonlime.org

S. 48 : Capital gains-Computation-Amount paid for removing encumbrance to a property without which sale or transfer could not be effected, is allowable as deduction. [S. 48(1)]

Held that amount paid for removing encumbrance to a property without which sale or transfer could not be effected, is allowable as deduction under section 48(i) of the Act. (AY. 2013-14)

Mahesh Pratapsingh Asher. v. ACIT (2022) 193 ITD 336 (Mum) (Trib.)

S. 48 : Capital gains-Computation-Sale of land-Interest paid was not claimed as deduction-Gifts from relatives-Matter remanded. [S. 24,45, 69A]

Assessee had purchased a vacant site from Development Authority by taking loan from bank and total interest paid was claimed as cost of acquisition of asset under section 48 while computing long term capital gains. Assessing Officer denied interest amount as part of cost of acquisition by holding that interest expenditure could be claimed as deduction under section 24 in year of payment. Assessee contended that the interest was not claimed as deduction.Matter remanded. During year, the assessee had received certain amounts from relatives. The Assessing office made addition under section 69A of the Act. On appeal the Tribunal held that since many of credits appearing in assessee's bank account were on account of bank transfers and assessee's submission could not be totally ruled out and assessee being an NRI and not being present in India during assessment proceedings, could not produce necessary material/evidence before Assessing Officer, in interest of justice and equity, matter was remanded to the Assessing Officer. (AY.2017-18)
Jerry Mathew Elias Kovoor. v. ITO (IT) *(*2022) 192 ITD 38 (SMC) (Bang) (Trib.)

S. 48 : Capital gains-Computation-Indexed cost of acquisition-Holding shares of BSE Ltd-For computing capital gain, indexed cost of acquisition of shares of BSE is to be considered from date of original membership of BSE and not from date of allotment of shares in BSE Ltd.[S. 2(42A), 45]

Assessee was a member of Mumbai stock exchange (BSE) carrying on business of share and stock broking.The assessee's claim of capital gain on sale of shares was disallowed by the Assessing Officer. On appeal Commissioner (Appeals) adopted cost inflation index from year of allotment of BSE equity shares to assessee as against cost inflation index for year in which BSE card was originally acquired for purpose of calculating Indexed cost of acquisition for computing long term capital gain on sale of equity shares of BSE Ltd. Tribunal held that indexation to calculate capital gain is liable to be reckoned with effect from allotment of BSE card and not from date of BSE equity shares issued to appellants. Tribunal further held that as per clause (ha) inserted in Explanation 1 to section 2(42A) by Finance Act, 2003, period of holding of shares of BSE Ltd. shall be reckoned from date of original membership of BSE and not from date of allotment of shares in BSE Ltd.. Accordingly, for computing capital gain, indexed cost of acquisition of shares of BSE was liable to be considered from date of original membership of BSE and not from date of allotment of shares in BSE Ltd. (AY. 2008-09)

Shivnarayan Nemani Shares & Stock Brokers (p) Ltd v. DCIT (2022) 192 ITD 50 (Mum) Trib)

S. 48 : Capital gains-Computation-Cost of improvement-Levelling, boundary work and fencing-Failure to produce evidence-Disallowance of expenditure is justified [S. 45]

The assessee claimed expenditure for improvement, toward levelling, boundary work and fencing. The Assessing Officer disallowed the expenditure as the assessee has not proved the expenditure. Tribunal affirmed the order of the Assessing officer. (AY. 2007-08)
Jaico Automobile Engineering Company (P.) Ltd. v. DCIT (2022) 192 ITD 147 (Bang) (Trib.)

S. 49 : Capital gains-Previous owner-Cost of acquisition-Capital asset acquired by will-Indexation-Cost of acquisition to be calculated taking into account cost of acquisition of previous owner of asset. [S. 2(29A), 2(42A), 45, 48,55(1)(b)(2)(ii), Art, 226]

One DJ held an undivided half share in a piece of land. She expired in June 1982. Probate of her will was granted by the High Court on November 5, 2004. Under the will, she bequeathed her share in the property to her aunt RRF and her brother MN in equal shares. Accordingly, the undivided one-fourth share in the property vested in RRF from the year 1982. RRF expired on May 12, 1992 leaving a will dated June 3, 1977, where under she bequeathed all her estate including the one-fourth share in the property to her husband RF. RF expired on September 17, 2006 leaving behind two sons as his legal heirs namely, SRF and PRF. Under a will dated February 19, 2006, RF bequeathed his estate including his one-fourth share in the property to his two sons in equal shares. Though no probate was granted in respect of the wills of RRF and RF, their only sons-SRF and PRF accepted the wills and acted upon them. Accordingly, PRF became the owner of one-eighth share in the property. The assessee decided to buy that one-eighth share. An order directed the assessee to deduct tax of Rs. 28,74,100 and the assessee deposited this amount of Rs. 28,74,100 with the Revenue even though it was the assessee's case that the amount directed to be deducted as tax at source had been incorrectly calculated and only a sum of Rs. 74,523 was the tax that had to be deducted. On a writ petition it was claimed that indexation of the cost of acquisition under the second proviso to section 48 should be available from the financial year 1981-82 although the transfer of the property to the assessee had taken place in the financial year 2010-11.Court held that the cost of acquisition of the property in the hands of the seller was deemed to be the cost for which the property was acquired by late DJG and the period of holding of lDJG, RRF and RF had also to be included in the period of holding of the seller for ascertaining the period for which the property was held by the seller. Based on the scheme of the Act, as provided in section 49(1)(ii), clauses (29A) and (42A) of section 2 and section 55(2)(b)(ii) of the Act, indexation of the cost of acquisition under the second proviso to section 48 would be available from the financial year 1981-82.

Rohan Developers Pvt. Ltd. v. ITO (IT). (2022)442 ITR 404/ 211 DTR 164/ 325 CTR 395 (Bom) (HC)

S. 49 : Capital gains - Previous owner - Cost of acquisition – Gift -Received flat as a gift from mother - Cost of acquisition of flat in hands of mother would be deemed to be cost of acquisition in hands of assessee-The cost of acquisition could not mean cost perceived by mother at time of receiving flat . [S. 45]

Assessee sold a flat which was received from his mother under a gift deed. The cost of acquisition was taken as the fair market value of such flat at the time of receipt of such flat by Smt. Saritha. (Mother of the Assessee). The Assessing Officer took cost of acquisition of flat as fair market value of such flat at time of receipt of such flat by mother of assessee and computed long-term capital gains. On appeal the Tribunal held that pursuant to joint development agreement mother of assessee transferred a land under joint development agreement to developer for consideration of receiving a built up area/flat developed by developer . Subsequently, flat received by mother in exchange of land was transferred by her to assessee. Mother of assessee got flat in exchange of plot of land transferred by her .Therefore the cost of acquisition could not mean cost perceived by mother at time of receiving flat and, therefore, voluntary act of mother of assessee in valuing property on higher side at time of receiving of same, would not force authorities to accept such escalated value. Appeal of the assessee was dismissed . (AY. 2014-15)

Saireddy Pruthviraj Reddy v. ITO (2022) 219 TTJ 252 / 217 DTR 36 / 145 taxmann.com 459 (Hyd)(Trib)

S. 49 : Capital gains-Previous owner-Cost of acquisition-Settlement deed-inherited property from grandfather-Entitled to benefit of indexation from date of his grandfather's acquisition of said property. [S. 45, 49(1)(iii)(a)]

The assessee was a co-owner of a residential house property which originally belonged to his grandfather. Assessing Officer allowed benefit of indexation as per assessee's share in said property i.e. 42.5 per cent from assessment year 2007-08 i.e. when assessee became owner of property by way of settlement deed executed by his father. Tribunal held that since assessee had inherited property from his grandfather by one of mode specified under section 49(1), he was entitled to benefit of indexation from date of his grandfather's acquisition of said property. (AY. 2011-12)

Dr. E.S. Krishnamoorthy. v. ITO (2022) 195 ITD 165 (Chennai) (Trib.)

S. 50B : Capital gains-Slump sale-Transfer of business undertaking-Specified hotels-Issue of preference shares and debentures-Exchange-Cannot be assessed as slump sale [S. 2(42C), 2(47), 45]

Dismissing the appeal of the Revenue the Court held that the surplus amount received on the transfer of two hotels consideration of which was settled by the issuance of preference shares and debentures are not assessable as slump sale. The order of the Tribunal is affirmed. (AY. 2007-08)

S. 50B : Capital gains-Slump sale-Assets of undertaking transferred-Not slump sale- S. 50B not applicable. [S. 45)

Held that the Commissioner (Appeals) had minutely examined the business transfer agreement and noted that the unit was not sold as a going concern but the assets were sold as individual assets, the valuation had been done separately, the valuation of the land had been separately mentioned in the valuer's report and that the assessee had not transferred the undertaking with all the assets and liabilities. The Tribunal re-examined the facts and found that the transferee had not taken over all the loans and liabilities. Section 50B was not applicable. (AY. 2005-06)

PCIT v. XPRO India Ltd. (2022) 446 ITR 668 / 217 DTR 265 / 328 CTR 593/ 289 Taxman 283 (Cal)(HC)

S. 50B : Capital gains-Slump sale-Entire business of the undertaking was transferred to subsidiary-Order of Tribunal assessing the amount as slump sale is affirmed [S. 2(11), 2(42C), 45, 50]

Dismissing the appeal, the Court held that the Tribunal did not err in deleting the disallowance for the assessment years 2006-07 and 2007-08 on account of slump sale of the chemical undertaking under section 50B of the Income-tax Act, 1961 relying on its decision in the assessee's own case for the assessment year 1994-95. Followed CIT v. Akzo Noble India Limited (2020) 423 ITR 208 (Cal)(HC) (AY.2006-07, 2007-08)

PCIT v. Akzo Noble India Limited (No. 1) (2022) 440 ITR 185 (Cal)(HC)

S. 50B : Capital gains-Slump sale-Depreciable assets-Block of assets-Sale of undertaking-Sale consideration is not liable to be taxed as short term capital gains [S. 2(11),2(42C) 45, 50]

Held that consideration received on sale proceeds of the assesee's chemical undertaking was not liable to tax as short term capital gains under section 50 or as long term capital gains. Followed PCIT v. Akzo Noble India Limited (2022) 440 ITR 185 (Cal) (HC).*(*AY.1996-97)

PCIT v. Akzo Noble India Limited (No. 2) (2022) 440 ITR 190/ 286 Taxman 251 (Cal)(HC)

S. 50C : Capital gains-Full value of consideration-Stamp valuation -
Transfer of immovable property-If the guideline value was more than the value declared in the document, then the guideline value was relevant for payment of tax, and whatever the assessee had received the amount was of no consequence. As long as a sale was effected the assessee was bound by section 50C of the Act. [S. 45, Art, 226]

Dismissing the petition, the Court held that the sale consideration declared in the sale deed was not relevant. The value had to be determined under section 50C of the Act. If the guideline value was more than the value declared in the document, then the guideline value was relevant for payment of tax, and whever the assessee had received the amount was of no consequence. As long as a sale was effected the assessee was bound by section 50C of the Act.(AY.2007-08)(SJ)

Samuel v. CBDT(2022)447 ITR 708 (Mad) (HC)

S. 50C : Capital gains - Full value of consideration - Stamp valuation- Date of agreement to sell to be taken into consideration for stamp duty valuation - Matter remanded.[S.45]
The Tribunal held that if Assessing Officer has found that a registered agreement to sell, as claimed by the assessee was actually executed, then the Assessing Officer was to adopt the stamp duty valuation as on the date of agreement to sell. Matter remanded. (AY. 2013-14)
Dharmendra B. Patel v. Dy. CIT (2022)98 ITR 268 (Surat) (Trib)

S. 50C : Capital gains - Full value of consideration - Stamp valuation – Development rights - Transfer of development rights took place in Financial year 2000-01 — Provisions of Section 50C inserted with effect from 1-4-2003 provision is not Applicable [S. 2(47)(ii) , 45]
Held that the assessee had transferred the development rights in the plot of land to the builder. The offer letter dated October 4, 2000 was accepted by the builder and advance payment was made. Possession of the plot of land was taken by the builder in the year 2001. The bank statement of the assessee-society showed that the amount of Rs. 6,00,000, was paid by the builder on November 25, 2000, while an amount of Rs. 5,33,350, was paid in the year 2001. Thus, all the essentials of a contract, i. e., offer, acceptance and consideration were fulfilled. Therefore the factual and legal position, development rights in the plot of land were transferred to the builder in the financial year 2000-01. Since the provisions of section 50C of the Act were inserted in the Act with effect from April 1, 2003, they were not applicable.(AY.2010-11)
Shri Ganadhiraj Co–Operative Housing Society v. Dy. CIT (2022)99 ITR 5 (SN)(Mum) (Trib)

S. 50C : Capital gains - Full value of consideration - Stamp valuation -Sale deed shown less than value for stamp duty purposes – Agreement to sale was entered earlier – Circle rate as on date of agreement to be taken – Amendment is clarificatory and has retrospective effect – Cost of improvement – No document was provided – Not allowable as deduction [S. 45 , 48]

Held that the agreement was entered into much prior to the date of registration and the part payment had also duly been done at the time of agreement. Hence, the circle rate on the date of registration could not be applied. The rate as on the date of agreement should be taken for the purpose of computation under the first proviso to section 50C(1) introduced with effect from April 1, 2017, which is clarificatory and was to be applied. As regards cost of improvement no evidence was furnished hence not allowed as deduction. (AY.2015-16)

Akash Juneja v. ITO (2022)100 ITR 45 (SN)(Delhi) (Trib)

S. 50C: Capital gains - Full value of consideration - Stamp valuation — Department Valuation – Objection of assessee was not considered - Matter remanded. [S. 45]

Tribunal held that the valuation done by the Departmental Valuation Officer was on the excessive side since it had not taken into consideration the value of similarly placed properties in the same vicinity having the same marketable value, taking into consideration various factors like clear title of property. Further, the Departmental Valuation Officer should have done a comparable analysis of the Central Public Works Department rates and State Public Works Department rates and should not have simply set aside the assessee's objection by stating that the Central Public Works Department rates was the approved method as per the Departmental directions. The matter was restored to the Assessing Officer to rework the sale consideration. (AY. 2012-13)

Ushaben Ambalal Oza v. ITO (2022)96 ITR 46 (SN)(Ahd) (Trib)

S. 50C : Capital gains-Full value of consideration-Stamp valuation-land sold-Objection for valuing as per stamp valuation-Reference to DVO-Assessing Officer was duty bound to refer valuation of said land to DVO. [S. 45, 50C(2)]

Assessee sold a land and showed short-term capital gain of certain amount. Assessing Officer held that Stamp Duty Value (SDV) of land as per section 50C was at much higher price than what was shown by assessee and, accordingly, he made addition on account of such difference in value of land. Held that since assessee had objected to adoption of SDV as full value of consideration in terms of section 50C(2), Assessing Officer was duty bound to refer valuation of land to DVO for determination of fair market value (FMV) of land for ascertaining capital gains and only after getting FMV determined by DVO, Assessing Officer ought to have computed capital gain. Matter remanded for referring the valuation of property to the DVO for determination of the fair market value as per section 50C(2) of the Act, after giving a reasonable opportunity to the appellant. (AY. 2015-16)

Manju Soni.(Smt.) v. ITO (2022) 197 ITD 757 (Varanasi) (Trib)

S. 50C : Capital gains-Full value of consideration-Stamp valuation-Option deposit-Option agreement for sale of twenty (20) flats in its residential project with its group entity-Addition on sale of those flats to third parties to sales value declared were unjustified. [S. 28(i)]

Assessee had entered into option agreement for sale of twenty (20) flats in its residential project 'Artesia' with its group entity, HRPL.In terms of agreement, HRPL had placed refundable deposits with assessee to obtain an option to purchase proposed flat, which would be constructed by assessee, at a pre-determined option price. According to Assessing

Officer, transaction with HRPL was a way to divert profits and shift consideration received on sale of flats from books of assessee to HRPL. Assessing Officer, added revenues realized by HRPL on sale of these flats to third parties to sales value declared by assessee and made additions to income.Held that at material time, when this agreement was entered into, even approval/clearance from local authority for commencement of construction was pending Further, this option deposit was neither secured nor did it give HRPL any right to specific performance. It was only an irrevocable option and not an agreement for sale. Further, there was no definitive manner provided for calculation of compensation and instead it was to be based on mutually agreeable terms. Therefore, it could not be said that assessee had entered into sham transactions with group entity with sole purpose of diverting revenue accruing to it and, thus, additions made by Assessing Officer was deleted. (AY. 2018-19)
K. Raheja (P.) Ltd. v. DCIT *(*2022) 196 ITD 607 (Mum) (Trib.)

S. 50C : Capital gains-Full value of consideration-Stamp valuation-Reference to DVO-Where the reference is made to DVO the Assessing Officer completed the assessment adopting deemed sale consideration before receipt of valuation report by DVO-Matter remanded-For purpose of computing exemption under section 54F, deeming fiction provided under section 50C could not be enlarged. [S. 45, 48, 54F]
Tribunal held that before adopting deemed consideration, it is the duty of Assessing Officer to refer valuation to DVO, in case assessee files objection for adopting deemed consideration. Where the Assessing Officer had referred valuation to DVO, Assessing Officer could not have completed assessment by adopting deemed sale consideration as per provisions of section 50C before DVO determined value of property. Matter remanded. Tribunal also held that section 50C is only applicable for determining full value of consideration as defined under section 48 and thus, for purpose of computing exemption under section 54F, deeming fiction provided under section 50C could not be enlarged. Matter remanded. (AY. 2016-17)
Baskarababu Usha. (Mrs.) v. ITO *(*2022) 193 ITD 573 (Chennai) (Trib.)

S. 50C : Capital gains-Full value of consideration-Stamp valuation-Guidance value to be taken on the agreement for sale and not on the date of Registration-Proviso to section 50C(1) inserted by Finance Act, 2016 is retrospective.[S. 45]
Assessee entered into a registered Joint Development Agreement dated 1-3-2013, pursuant to which it had also entered into a MOU dated 8-4-2013 as per which assessee had paid a part of sale consideration on date of such MOU, guidance value had to be computed as prevailing on date of MOU dated 8-4-2013. The Assessing Officer computed the capital gains on the basis of date of registration of document. On appeal the Tribunal held that proviso to section 50C(1) deals with cases where date of agreement fixing amount for consideration and date of registration for transfer of capital asset are not same and in such cases, value adopted or assessed or assessable by stamp valuation authority as on date of agreement is to be taken for purposes of computing full value of consideration for such transfer. FollowedCIT v. Vummudi Amarendran [2020] 429 ITR 9[2021] 277 Taxman 243 (Mad)(HC) (AY. 2014-15)
Bellandur Chikkagurappa Jayaramareddy. v. ACIT *(*2022) 193 ITD 757 (Bang) (Trib.)

S. 54 : Capital gains - Profit on sale of property used for residence – Possession more than three years- Documents showing rental income not verified by department-Matter remanded [S. 45]

The Tribunal held that the matter required a remand to the Assessing Officer since the documents filed by the assessee including the returns for the assessment years 2005-06 and 2006-07 disclosing the rental income from the property in question, had not been verified. (AY. 2009-10).

Mohd. Shakeel Quadri and v. ITO (2022)97 ITR 52 (SN)(Hyd.)(Trib)
Mohd. Layeeq v. ITO (2022)97 ITR 52 (SN)(Hyd)(Trib)

S. 54 : Capital gains - Profit on sale of property used for residence - Purchase of residential unit in name of assessee's wife — Not entitled to exemption. [S. 45]

The assessee sold certain immovable property jointly held with two other members and received his share. He claimed exemption under section 54 of the Act having purchased a new flat. The Assessing Officer denied the exemption because the new flat was purchased by the assessee in the name of the assessee's wife. The Commissioner (Appeals) affirmed this. The Tribunal followed the view taken by the jurisdictional High Court. Prakash v ITO (2009) 312 ITR 40 (Bom.)(HC) Not followed, CIT v. Shri Kamal Wahal (2013) 351 ITR 4 (Delhi) (HC) , CIT v. Gurnam Singh (2010) 327 ITR 278 (P&H(HC). Denial of exemption was affirmed . (AY. 2015-16)

Jayawant Gajanan Sutar v .ITO (2022)96 ITR 3 (SN) (Pune) (Trib)

S. 54 : Capital gains-Profit on sale of property used for residence-New house property purchased in the name of married daughter-Exemption from capital gains tax is not available [S. 45]

Assessee sold her house property for certain consideration and claimed deduction under section 54 for purchase of another house property in name of her married daughter, who was divorced. Assessing Officer disallowed deduction claimed, which was affirmed by CIT(A). On appeal the Tribunal held that investments made in name of married daughter could not be considered as investments made for purpose of claiming deduction under section 54 of the Act. Benefit of deduction under section 54 could not be allowed when property had been purchased in name of married daughter. (AY. 2011-12)

Bhaskari Madhavan. (Mrs.) v. ITO (2022) 196 ITD 85 (Chennai) (Trib.)

S. 54 : Capital gains-Profit on sale of property used for residence-Capital Gain Account Scheme-Entire sale consideration was invested for purchasing new residential flat and said investment was within stipulated time limit-Eligible to claim deduction.[S.54(4), 54F, 139]

Assessee sold its property and invested sale consideration for purchasing a new residential flat. Assessee filed return under section 139 and claimed deduction under section 54/54F of the Act. However, part of sale consideration was received after filing return for which assessee filed revised return and claimed entire benefit under section 54/54F of the Act. AO restricted deduction on ground that certain payments with respect to purchase of new property were made by assessee after due date of filing of return and same would not be eligible for deduction under section 54/54F of the Act. On appeal the Tribunal held that since assessee invested entire sale consideration immediately on receipt of same and said investment was within stipulated time limit, sub-section(4) of section 54/54F related to

deposit in capital gain account scheme would not be attracted in such case and assessee would be eligible to claim deduction of entire sale consideration.. (AY. 2015-16)
Aniruddh Rinki Gandhi v. DCIT (IT) (2022) 194 ITD 376 (Ahd) (Trib.)

S. 54 : Capital gains-Profit on sale of property used for residence-Purchase-Under construction building-Date of registration-If possession was taken within period of 2 years from sale of existing residential house, even if same was not purchased from sale proceeds of existing property entitle to exemption [S. 45]

Assessee booked a new residential flat in an under construction building for which majority of payment were made to builder by availing mortgage/housing loan. Thereafter, on 21-5-2014, assessee sold its exisiting residential property and claimed sale proceeds as deduction under section 54 of the Act. Assessing Officer held that date of registration of agreement of sale i.e. 15-2-2012, was to be considered as date of purchase and disallowed deduction on ground that new residential house was not purchased within specified period of one year before or two years after sale of existing residential property and assessee did not use sale consideration to purchase new property. On appeal the Tribunal held that the assessee paid majority of consideration for purchase of property and took possession of it on 2-4-2016. Requirement of section 54 is that assessee should purchase a residential house within specified period and source of funds is quite irrelevant. On the facts date of possession of new residential house was to be considered as date of purchase, and since, date of possession fell within period of 2 years from sale of existing residential house, assessee would be entitled to claim deduction under section 54 even if same was not purchased from sale proceeds of existing property. (AY. 2015-16)
Reji Easow. v. ITO (2022) 194 ITD 384/ 211 DTR 385/ 216 TTJ 616 (Mum) (Trib.)

S. 54 : Capital gains-Profit on sale of property used for residence-Date of possession should be taken as the date of purchase and not the date of registration [S. 45]

Allowing the appeal of the assesse the Tribunal held that for the purpose of section 54, it is the date of possession which should be taken as the date of purchase and not the date of registration of agreement for sale. Referred CIT v. Beena K Jain (Smt) (1996) 217 ITR 363 (Bom)(HC) (TS-155-ITAT-2022 (Mum) (AY. 2015-16) (Dt. 8-3-2022)

Raj Easow v.ITO (2022)) BCAJ-April-P. 30 (Mum) (Trib)

S. 54 : Capital gains-Profit on sale of property used for residence-Amendment to provision of section 54, restricting deduction allowed therein to only one residential property operates prospectively from 1 April 2015.
Assessee sold residential house property and invested the proceeds to buy two properties at different locations to claim exemption under section 54. Assessing officer allowed exemption with respect to only one house property. On appeal, the CIT(A) upheld the disallowance made by the AO.
On further appeal, the Hon'ble Tribunal relying on the decision of the Hon'ble Madras High Court in the case of Tilokchand & Sons v. ITO (.) 413 ITR 189(Mad)(HC), adjudicated the matter in favor of the assessee held that since amendment to provision of section 54 restricting deduction allowed under section 54 to only one residential property was applicable prospectively from 1 April 2015, exemption claimed by assessee under section 54 during assessment year 2013-14 would not fall within ambit of amended provision. Accordingly,

assessee was entitled to benefit of exemption under section 54 to extent of value of two residential house properties and not just one. (AY. 2013-14).

Saroj Arora v. ITO (2022) 94 ITR 698 (Delhi) (Trib)

S. 54 : Capital gains-Profit on sale of property used for residence –Cost of improvement-Renovation expenses-Enquiry should have conducted with the builder who has constructed the building and not with neighbours-Estimate of Rs 18 lakhs by CIT(A) is held to be reasonable [S. 45, 48]

Assessee had purchased a flat and incurred expenditure of Rs. 23 lakhs for purpose of renovating house. Inspector visited house, took photographs and also made enquiry with neighbours who said that they were not aware of improvements done by assessee. On basis of reports submitted by Inspector, Assessing Officer concluded that assessee had not carried out any improvement and accordingly, he disallowed entire amount. Commissioner (Appeals) directed Assessing Officer to allow improvement cost to extent of Rs. 18 lakhs opining that if Assessing Officer wanted to know exactly about improvement works carried out by assessee, he should have enquired through a builder who constructed building instead of neighbours. On appeal the Tribunal held that disallowance made by Commissioner (Appeals) to extent of Rs. 5 lakhs was fair and reasonable. (AY. 2013-14)

ACIT v. Sambandam Dorairaj. (2022) 192 ITD 374 (Chennai) (Trib.)

S. 54 : Capital gains-Profit on sale of property used for residence-Residential property standing in name of wife cannot be considered to be owned by assessee-Difference between section 54 and section 54F-Specified Bonds-Assessee can claim exemption under Section 54 as well as section 54EC. [S. 27, 45, 54EC, 54F, Hindu Succession Act 1956, S. 14]

Court held that the property in Domlur was standing in the name of the assessee's wife by registered sale deed dated December 8, 2011. For all practical purposes, and even as per section 14 of the Hindu Succession Act, 1956, the property standing in the name of a female heir becomes her absolute property. Notwithstanding that the property standing in the name of the assessee's wife was held to be eligible for exemption under section 54 of the Act, while considering the exemption under section 54F of the Act, the residential house purchased in the name of the assessee's wife could not be construed as property owned by the assessee. Excluding this property standing in the name of the assessee's wife, the property at Bangalore bequeathed to the wife and son of the assessee being considered as justifiable by the Commissioner (Appeals) which had attained finality, what was owned by the assessee on the date of transfer of the original asset-land, i. e., April 10, 2012, was the residential property in Kerala which was subsequently sold on October 8, 2012. The assessee was entitled to exemption under section 54F (AY.2013-14)

Antony Parakal Kurian v. ACIT (2022)442 ITR 38 (Karn) (HC)

S. 54 : Capital gains-Profit on sale of property used for residence-Joint development agreement-Co-owner-Entitle to the exemption to extent assessee's share of 42.5 per cent as specified under JDA on the cost of one flat only. [S. 45]

Assessee, a co-owner of a residential house, along with other parties had entered into a joint development agreement (JDA) with a developer and received a non-refundable deposit of Rs. 2.25 crores along with two flats. Assesseee claimed the benefit of exemption under section 54 in respect of the cost of only one flat which was registered and allotted to him under JDA. The Assessing Officer allowed the benefit of exemption under section 54 to extent of 42.5 per cent of assessee's share but on the cost of two flats. On appeal, the Tribunal held that

since only one flat was registered in name of assessee, the benefit of exemption under section 54 was to be allowed to extent of assessee's share in the property i.e. 42.5 per cent but on the cost of one flat only and not two. (AY. 2011-12)
Dr. E.S. Krishnamoorthy. v. ITO (2022) 195 ITD 165 (Chennai) (Trib.)

S. 54 : Capital gains-Profit on sale of property used for residence-Two residential house properties-Entitle for exemption-Amendment is from assessment year 2015-16 [S. 45]
Assessee claimed the benefit of exemption under section 54 in respect of purchase of two residential house properties. AO allowed exemption only in respect of one flat. Held that since the amendment to the provision of section 54, restricting deduction allowed therein to only one residential property with effect from the assessment year 2015-16, the AO is directed to grant deduction under section 54 as claimed by the assessee. (AY. 2014-15)
Nigam Narendrabhai Khansaheb. v. DCIT (2022) 195 ITD 661 (Surat) (Trib)

S. 54 : Capital gains-Profit on sale of property used for residence-Short term-Long term –Land-House constructed was sold in the same year of construction-Assessable as short term-Exemption is available only to long term capital gains-Consideration towards land to be assessed as long term capital gains-Cost of boundary walls-Deduction-Evidence was not produced-Deduction was denied. [S. 2(29A), 2(29B),2(42A) 2(42B), 45, 48]

The Assessee constructed a house upon said land in the financial year 2013-14 and sold said land along with one part of a house constructed upon the land in the same financial year for a consideration of a certain amount. She further made investments in new residential house property and, accordingly, claimed exemption under section 54 of the Act. Held that building/house constructed was sold within 36 months of construction and, hence, capital gains arose on it being a short-term capital gain was not eligible for exemption under section 54 of the Act. However, since the assessee had held land for more than thirty-six months before its sale, exemption under section 54 was to be allowed on long-term capital gains realised on the sale of land. Tribunal held that consideration towards land has to be assessed as long-term capital gains. Deductions on account of the construction of the boundary wall and the filling of soil were disallowed due to failure to provide any evidence. (AY. 2014-15)
Seema Shah (Smt.) v. ITO (2022) 195 ITD 733 / 99 ITR 595 (Varanasi) (Trib)

S. 54 : Capital gains-Profit on sale of property used for residence-Land appurtenant-Sale of plot-Entitle to exemption-Cost of costly items purchased for the new house cannot be held to be treated as investment for making the house habitable-Not entitled to exemption. [S.45, 54F]

The assessee sold a residential house along with the land appurtenant to the building. Further, the assessee computed long-term capital gain after considering the purchase of a new residential house under section 54F. The AO denied the exemption claimed as the sale deed for the residential house described the property as a plot. The Tribunal held that merely because the sale deed and agreement to sell the description of the property was mentioned as land, the same could not go against the assessee denying the benefit of deduction under section 54. The assessee has submitted a valuation report, property taxes and water taxes to substantiate that the sold property was, in fact, a building with land appurtenant. Hence, the Tribunal held that the assessee is entitled to claim the benefit of deduction under section 54 on the sale of the property and the subsequent investment in the residential property will be exempt under section 54F of the Act. However cost of costly items purchased for the new

house cannot be held to be treated as investment for making the house habitable is not entitled to exemption**.** (AY. 2017-18)
Charu Aggarwal v. Dy.CIT (IT) (2022) 194 ITD 478/ 216 TTJ 428 / 212 DTR 78 (Delhi) (Trib.)

S. 54 : Capital gains-Profit on sale of property used for residence-Sale of industrial plot of land with an office built-up area on ground floor and so-called residential built up area on first floor –Not entitled to deduction u/s 54 of the Act-Allowed deduction u/s54F [S.54F]
Held that the property is an industrial plot not a residential plot as clearly borne out from the contents of the sale deed as also from the valuation report, the benefit of deduction u/s 54 is not available. Allowed deduction u/s 54F of the Act (AY. 2015-16)
Chain Singh Mundra v. ITO (2022 194 ITD 718 / 216 TTJ 761 / 211 DTR 377 (Chd) (Trib)

S. 54 : Capital gains-Profit on sale of property used for residence-Date of possession-Date of purchase is the date on which a residential house becomes ready for possession [S. 45]

The assessee sold a residential house on 27-12-2012. The agreement of the new residential house was entered on 29-10-2011 and the possession was received on 6-1-2012. The assessee claimed the deduction u/s 54 of the Act. The AO rejected the claim on the ground that the agreement was entered in to on 29-10-11 (i.e.one year before the date of sale / transfer of the old residential house). Order of the AO was affirmed by the CIT(A). On appeal the Tribunal held that agreement was entered on 29-10-2011 and the substantial payment was made on same day however the possession was received on 6-1-2012 which fell within a period of one year before the date of transfer of the residential house (i.e. 27-12-2012). The appeal was allowed. Referred D.M.Dujod v.ITO (ITA No. 4554/ Bom/1986) (ITA NO. 6735 / 2019 dt. 19-4-2022)(AY. 2012-13)

Uday Lad v. ACIT (2022) The Chamber's Journal-May-P. 81 (Mum) (Trib)

S. 54B : Capital gains - Land used for agricultural purposes -Agricultural Land-Purchase of agricultural land in same year – Order of CIT(A) allowing the deduction was affirmed . [S. 45]
Held, that the asseessee has furnished the evidence as regards the purchase of agricultural land .Order of CIT(A) is affirmed . (AY. 2014-15)
ITO v. Babita Gupta (2022)100 ITR 252 (Delhi)(Trib)

S. 54B : Capital gains - Land used for agricultural purposes - Acquisition by Government — Compensation —Offering capital gains to tax under mistaken belief — Addition denying the exemption was deleted . [S. 2(14)(iii)(b) , 10(37) , 139(1)]
Held that the assessee had filed a return of income offering the capital gains to tax under a mistaken belief and claimed deduction under section 54B of the Act. The assessee was entitled to claim exemption under section 10(37) of the Act in respect of the compensation derived from the Government of Maharashtra on the compulsory acquisition of the assessee's land. The authorities under the Act were required to assist the assessee in the assessment proceedings by giving effect to the correct position of law, even if the assessee made a wrong claim. Therefore, the order of the Commissioner (Appeals) confirming the view of the

Assessing Officer denying the deduction under section 54B of the Act was not justified and the addition was deleted .(AY.2009-10).

Kishor Ganpatrao Karande v. ITO (2022)100 ITR 67 (SN)(Pune) (Trib)

S. 54B : Capital gains-Land used for agricultural purposes-Plots of land sold which formed share of assessee were property held by assessee's husband (Karta), capital gains could only be assessed in his hands-Exemption under section 54B/54F to assessee is not eligible [S. 45, 54F]

Assessees Seema Bhattacharya and Jharna Bhattacharya were wives of kartas Shankar Bhattacharya and Bhaskar Bhattacharya who were brothers. Assessees sold their agricultural land and purchased an immovable property from sale consideration.Assessee Shankar Bhattacharya claimed exemption under section 54B for investment of sale proceeds in agricultural land. Assessing Officer denied said claim on ground that capital asset sold was a residential plot and not agricultural land. Held that there was nothing on record to suggest that either land was converted into residential purposes or even construction of residential house for claiming exemption under section 54F. Since plots of land sold which formed share of Jharna Bhattachrya were property held by karta, Bhaskar Bhattachrya capital gains could only be assessed in his hands and question of exemption under section 54B/54F to assessee, JB is not eligible. (AY. 2009-10)

ITO v. Seema Bhattacharya. (2022) 197 ITD 241 (Jabalpur) (Trib.)

S. 54B : Capital gains-Land used for agricultural purposes-Purchase of land-Failure to purchase the land in her name-Not eligible to claim exemption [S. 45]

Assessee transferred certain agricultural lands and claimed exemption in name of her sons. Assessing Officer held that exemption under section 54B could not be allowed because property was not purchased in name of assessee. On appeal, Commissioner (Appeals) affirmed action of Assessing Officer. On appeal the Tribunal held that since new agricultural land was not purchased in name of assessee who transferred original property but in name of her sons, she would not be entitled to claim benefit of exemption under section 54B. (AY. 2011-12)

Vandana Maruti Pathare. v. ITO (2022) 194 ITD 753 (SMC) (Pune) (Trib.)

S. 54B : Capital gains-Land used for agricultural purposes-Purchase of agricultural land in the name sons-Not entitle to exemption-Followed jurisdictional High Court.

The AO held that new agricultural land was not purchased in the name assesse but in the name of sons hence not entitled to exemption. Tribunal upheld the order of the AO, following the jurisdictional High Court in Prakash v.ITO (2009) 312 ITR 40 (Bom)(HC). (ITA No. 2223/ Pun/ 2017)(AY. 2011-12)

Vandana Pathore v.ITO 2022) The Chamber's Journal-August-P. 154 (Pune) (Trib)

S.54F : Capital gains-Investment in a residential house-Amount Deposited in Bank under Capital Gains Accounts Scheme, 1988-Amount Not used in purchase of residential house within specified date-Denial of certificate for withdrawal of amount-Permitted withdrawal of amount. [S.45, Capital Gains Accounts Scheme, 1988 Art, 226]

The assessee deposited the amount in under Capital Gains Accounts Scheme, 1988 (1988) 172 ITR (St.) 54.Amount was not used in purchase of residential house within specified date. The assessee paid the advance tax on the said amount and requested the Assessing Officer to issue the certificate. The Assessing Officer denied the certificate on the ground that unless the return for the assessment year 2022-23 is filed, certificate cannot be issued. On writ allowing the petition the Court held that the assessee has deposited the entire amount of the advance tax and an affidavit and further undertaken by the assessee that while filing of the return, physical copy would also be given to the Assessing Officer having jurisdiction. With the affidavit tendered before the court additionally pursuant to the submissions made by the assessee the order of the Assistant Commissioner refusing to issue the no objection certificate for the withdrawal of the balance deposit was quashed. The assessee was permitted to withdraw the remaining amount of the deposit in the bank.(AY.2019-20)

Rashesh Shirish Sanjanwala v. CIT (2022)441 ITR 374 /285 Taxman 710/ 212 DTR 348/ 326 CTR 170 (Guj) (HC)

S. 54F : Capital gains- Investment in a residential house -Joint property – Factually incorrect finding – Matter remanded [S.45 , 133(6)]

Held that the claim of the assessee that the husband of the assessee had taken a housing loan from the Life Insurance Corporation for this purpose, the husband of the assessee had specifically shown income from self-occupied property and in the absence of cogent evidence that the amount claimed as loan from Life Insurance Corporation was invested in the property, the benefit of indexation was not allowable to the assessee. This was never clarified by the Assessing Officer nor examined. Therefore, the issue was remanded to the Assessing Officer to verify and examine the documents relied upon by the assessee and pass order afresh.As regards purchase of new property since the Assessing Officer had recorded factually incorrect findings in regard to the property purchased in the name of husband of the assessee, the issue was remanded to the Assessing Officer with the direction to verify this aspect of the matter and pass order afresh.(AY. 2010-11)

Munni Devi Agarwal (Smt.) v. ITO (2022) 99 ITR 177 (Jaipur) (Trib)

S.54F : Capital gains- Investment in a residential house – Purchase of office premises – Not residential premises – Not entitle exemption – Different survey number – Compromise deed – No connection with transfer – Not allowable as deduction [S.45, 48]

Held that the new asset purchased by the assessee was office premises and not residential premises . Rejection of claim is held to be justified . The payment made to the other co-owners had no relation with the transfer that was the subject matter of computation of long-term capital gains hence not allowble as deduction . .(AY.2005-06)

Arun Keshavrao Narwade (HUF) v. ITO (2022)95 ITR 53 (SN)(Pune) (Trib)

S.54F : Capital gains- Investment in a residential house -Sale of agricultural land and two flats – Purchase of plot for construction – Not entitle to exemption . [S. 45]

Assessee had sold certain agricultural land and two flats and purchased a plot of land for construction of residential house . Assessing Officer denied claim for exemption under section 54F for reasons that sale deed reflected subject property as a plot of land . On appeal, assessee contended that what was purchased was in fact a residential house, and as he wanted to build a new house thereon, structure was dismantled and as dismantling could not be completed by date of spot inspection directed by Sub-Registrar, he levied stamp duty on super-structure as well . Commissioner (Appeals) allowed part relief to assessee . On appeal the Tribunal held that sale deed, was only a plot of land for construction of a residential house thereon rather, but for demolition having been completed by date of inspection, no stamp duty would have been paid on structure part and no case for construction of a residential house had been preferred or pressed at any stage by assessee . Exemption under section 54F on purchase of plot could not be allowed . Investment if at all, could be taken into account that would be to extent of assessee's share in property purchased being at one-half and would be exigible only in respect of capital gain arising on transfer of a long-term capital asset/s other than a residential house . (AY . 2012-13)

Bhag Chand Jain Through L/R Vikrant Kumar Jam v. Dy. CIT (2022) 220 DTR 129 / 220 TTJ 1139 / (2023)199 ITD 241 / 147 taxmann.com 170 (Jabalpur)(Trib)

S.54F : Capital gains-Investment in a residential house –Sale of immoveable property-Purchase of three flats-Name of wife, son and himself-Flats purchased in name of assessee's wife and son were also to be allowed-Renovation expenses-Issue remanded to the file of CIT(A). [S. 45]

Assessee had sold an immovable property owned by him and invested long-term capital gain (LTCG) on purchase of three flats in name of his wife, son and himself. Assessing Officer allowed deduction under section 54F only to extent of investment made in name of assessee and denied deduction of investment made in name of assessee's wife and son. Tribunal directed the AO to allow benefit of deduction under section 54F for two flats purchased in name of assessee's wife and son as well. Followed Bhagwan Swroop Pathak v. ITO [IT Appeal No. 2754 (Delhi) of 2019, dated 5-3-2020] wherein the Tribunal had allowed deduction under section 54F claimed for purchase of property in name of assessee's son. As regards the renovation expenses, matter remanded to the file of CIT(A) for verification and decide in accordance with law. (AY. 2015-16)

Mukkamala Srihari Rao. v. ACIT (2022) 197 ITD 36 (Ranchi) (Trib.)

S.54F : Capital gains-Investment in a residential house-Exemption claimed under wrong section-Surrender of tenancy rights-Claimed exemption under section 54 instead of section 54F-Entitled to claim exemption under section 54F without filing revised return. [S. 45, 54, 139]

Assessee received consideration for surrendering her tenancy rights in a residential apartment and invested said consideration in a new residential flat. In return of income, assessee claimed exemption under section 54 instead of section 54F with respect to capital gains arising from surrender of tenancy rights. During scrutiny assessment, assessee attempted to correct said mistake however the Assessing Officer rejected claim. On appeal the Tribunal held that since a claim for exemption was rightly made by assessee and only a wrong section was quoted while making said claim, same would be qualitatively different from making a fresh claim and, thus, assessee would be entitled to claim exemption under section 54F without filing revised return. (AY. 2017-18)

ITO v.Armine Hamied Khan (Mrs) (2022) 197 ITD 110 /2023) 222 DTR 233 (Mum) (Trib.)

S.54F : Capital gains-Investment in a residential house-Owned two residential property-Denial of exemption is justified. [S. 45]

Assessee had sold his shares in ECC and TIL, capital gain invested in a residential property and claimed exemption under section 54F of the Act. The AO held that the assessee already owned two residential property, at Raipura and Vishubaug Farm and, thus, claim under section 54F was denied. Assessee claimed that said farm property was an agricultural land used for carrying out agricultural activities and even included a cow shed from which assessee generated income from sale of milk.Field Inspection Report and photographs of said property clearly showed that it was a 22 acres land wherein assessee had built residence/bungalow, manager's office, worker's residence/outhouse, storehouse/farm equipment, cow shed etc. The assessee had failed to produce any property tax details and electricity connection to prove nature of property and had also not offered any agricultural income/loss in his return of income. Denial of exemption is affirmed. (AY. 2017-18)

Atul Govindji Shroff. v. DCIT (2022) 197 ITD 366 (Ahd) (Trib.)

S.54F : Capital gains-Investment in a residential house-Construction of building-Structure not fit for residential house-Constructed to exploit for the purpose of Hostel-Not eligible for exemption. [S. 45]

Assessee sold agricultural land and claimed exemption under section 54F on account of construction of a building. Assessing Officer denied exemption on ground that building was constructed for commercial purposes, i.e., for purpose of hostel only. Held that building in question was a structure not fit for residential house but to exploit same for commercial usage.Further, there was no evidence on record to suggest that originally assessee constructed building as a residential building and subsequently it was converted into a hostel building at request of lessee. As the assessee constructed building for commercial purposes only not eligible for exemption. (AY. 2008-09)

Gundala Sarvottam Rao. v. ITO (2022) 197 ITD 374 (Hyd) (Trib.)

S.54F : Capital gains-Investment in a residential house-Co-owner of property-Cannot be treated as absolute owner-Denial of exemption is not valid [S. 45]

Allowing the appeal of the assessee the Tribunal held that the assesee was full owner of first residential property and had 50% share in the second residential property on the date of transfer of original capital asset in the form of a plot. Denial of exemption under section 54F on the ground that he was holder of 50% of share jointly with wife in the residential property is not valid. Followed Amit Gupta v. ACIT (2017) 43 ITR 427 (Delhi)(Trib) (ITA No. 5453/ Mum/2019 dt. 14-6-2022) (AY.)

Anant R.Gowande v. ACIT (2022) The Chamber's Journal-December-P. 89 (Mum)(Trib)

S.54F : Capital gains-Investment in a residential house-Residential house-Purchase of residential property on first floor of a complex having shops constructed on ground floor-Entitle to exemption. [S. 45]

Assessee purchased a property on first floor of a complex having shops constructed on ground floor and claimed exemption. Assessing Officer denied the exemption considered property to be of commercial nature. Commissioner (Appeals) confirmed the order of Assessing Officer. On appeal the Tribunal held that the assessee had purchased property as a residential property and registering authority had also registered said purchase considering it as a residential property.-Electricity Department had also considered use of said premises as a residential use and had charged electricity rates accordingly. Further, Municipal authorities had also charged property tax treating it as a residential property. Denial of exemption was held to be not valid. (AY. 2010-11)
Ashok Kukreja. v. ITO *(2022) 193 ITD 888 (Indore) (Trib.)*

S. 55 : Capital gains - Cost of improvement - Cost of acquisition – FMV as on 1-4-1981- Land situated in more appropriate location as compared to sale instance considered by DVO- FMV at Rs 607 per square meter for indexed cost of acquisition.[S. 45]
The assessee's land was situated in a costly area and prices of the land in that area was on the higher side. Therefore, considering the entirety of the facts and taking a holistic view the fair market value at Rs. 607 per square metre was adopted to meet the ends of justice. Held, that the Assessing Officer was to apply the rate of Rs. 607 per square metre for calculation of the indexed cost of acquisition for the purpose of computation of long-term capital gains in the hands of the assessee. (AY. 2013-14)
Dharmendra B. Patel v. Dy. CIT (2022)98 ITR 268 (Surat) (Trib)

S. 55A : Capital gains-Reference to valuation officer-Prior to 1-7-2012, no reference to DVO could be made under section 55A where AO was of view that FMV of property as on 1-4-1981 was less than value declared by assessee. [S. 45]
Assessee converted land into stock-in-trade and part of it was sold. Assessee computed long-term capital gains on said sale. Assessing Officer on doubting assessee's valuation made a reference to DVO to value land as on 1-4-1981 as well as on date of conversion and enhanced amount of long-term capital gain. On appeal the Tribunal held that FMV as on 1-4-1981 and as on date of conversion of land was duly supported by valuation report of registered valuers. Since prior to 1-7-2012, no reference to DVO could be made under section 55A where Assessing Officer was of view that FMV as on 1-4-1981 was less than value declared by assessee, substitution of FMV by Assessing Officer could not be held in accordance with law. (AY. 2005-06)
Peninsula Land Ltd. v. DCIT (2022) 193 ITD 366 (Mum) (Trib.)

S. 56 : Income from other sources-Relative-Definition of relative under two different Acts-Writ petition dismissed-Interpretation of taxing statute-Legislative function-Causus Omisus-Not created by interpretation. [S. 2(41), Art, 226, Maintenance and Welfare of parents and Senior Citizens Act, 2007, S. 2(g), 23]

Writ petition was filed seeking a direction that (a) "relative" as defined under section 2(g) of the 2007 Act be treated at par with "relative" as defined under section 2(41) and section 56 of the 1961 Act for grant of exemption from tax on gifts received and challenging the provisos and Explanation in section 56 of the 1961 Act granting exemption to relatives while excluding relatives as defined under section 2(g) of the 2007 Act. Dismissing the petition the Court held that the definition of relative under Income-tax Act in no manner promoted the maintenance and welfare of senior citizens. Consequently, the reliance placed by the assessee on sections 3 and 4 of the 2007 Act that it was a welfare legislation and had overriding effect

over other Acts was untenable in law. The contention that the 1961 Act made two classes of senior citizens was contrary to the facts. This would not prejudice the right of the donee to file any proceeding in accordance with law. The Court also observed that the general approach of the courts is to ensure that they do not stray into usurping the legislative function. A specific instance of this approach is the rule that a casus omissus is not to be created or supplied, so that a statute may not be extended to meet a case for which provision has clearly and undoubtedly not been made. Relied on Babita Lila v. UOI (2016) 387 ITR 305 (SC)

Indira Uppal (Miss) v.UOI (2022)447 ITR 683/ 289 Taxman 487 (Delhi)(HC)

S. 56 : Income from other sources – Purchase of land- less than stamp duty value- Not producing details of share- Difference between stamp duty and purchase value rightly added to income. [S. 56 (2) (vii) (b)]

The Tribunal held that the assessee had not produced details of the assessee's share, thus, the Assessing Officer added the difference between the market value and purchase consideration as income of the assessee under section 56(2)(vii)(b) of the Act. In the absence of any further details, the disallowance made by the Assessing Officer was confirmed. (AY. 2016-17).

Pavan Anil Bakeri v. Dy. CIT (2022)98 ITR 71 (SN) (Ahd) (Trib)

S. 56 : Income from other sources — Purchase of land for consideration less than value adopted for stamp value — Details not produced – Addition is confirmed . [S.56(2)(vii)(b)]

Held that the assessee had not produced details of the assessee's share of 24.35 per cent. namely the proportionate amount of Rs. 16,17,478 being the difference between the market value and purchase consideration which was being treated as income of the assessee under section 56(2)(vii)(b) of the Act. In the absence of any further details, the disallowance made by the Assessing Officer was to be confirmed.(AY. 2016-17)

Pavan Anil Bakeri v. Dy. CIT (2022) 98 ITR 71 (SN)(Ahd) (Trib)

S. 56 : Income from other sources – Share premium- The additional shares of the assessee-company were issued and allotted on a pro rata basis to the existing shareholders- Addition is not justified [S. 56(2)(viib)]

Held that the additional shares were issued to its existing shareholders on a pro rata basis of their existing shareholding, the provision of section 56(2)(viib) cannot be applied (AY. 2015-16)

Chhattisgarh Metaliks & Alloys (P)Ltd. v. ITO (2022) 220 TTJ 99 / 219 DTR 18 (Raipur)(Trib)

S. 56 : Income from other sources – Issues of shares in excess of fair market value- Consideration received by Venture Capital Undertaking- Exception- Conditions prescribed satisfied- Premium of issue of shares not taxable. [S. 10(23FB), 56 (2) (Viib), Securities and Exchange Board of India (Venture Capital Funds) Regulations, 1996, S. 2(n).

The Tribunal held that the assessee satisfied the twin conditions prescribed under regulation 2(n) of the 1996 Regulations. The assessee-company did not fall in the negative list of the Third Schedule to the 1996 Regulations, in view of the nature of business carried on by it.

The assessee fulfilled the requisite conditions of being a venture capital undertaking. Therefore, the case of the assessee fell within the ambit of the exclusionary provision contained in the first proviso to clause (viib) of section 56(2) of the Act and the premium on issue of shares in question was not taxable.(AY. 2015 -16)
Bigfoot Retail Solution Pvt. Ltd v. ACIT (2022)97 ITR 73 (SN) (Delhi) (Trib)

S. 56 : Income from other sources – Shares issued – Non -Resident – Provision is not applicable [S. 2(24)(xvi), 56(2)(viib)]
Held that where shares were issued to non-residents, section 56(2)(viib), read with section 2(24)(xvi) could not have been made applicable to shares issued to non-residents mainly to encourage foreign investments . Addition was deleted . (AY. 2018-19)
Raw Pressery (P) Ltd. (2022) 220 TTJ 26 / 143 taxmann.com 158 (Mum)(Trib)

S. 56: Income from other sources - Interest on enhanced compensation for compulsory acquisition of land —Method of accounting - Taxable in year of receipt irrespective of system of accounts followed - Considering hardship 50 Per Cent. deduction allowed [S. 56(2)(viii)), 57(iv), 145A]
The Tribunal held that interest on compensation is treated as income from other sources in section 56(2)(viii) of the Act pursuant to an amendment with effect from April 1, 2010 by the Finance (No. 2) Act, 2009. Irrespective of the system of accountancy being followed by the assessee, interest on enhanced compensation shall be taxable in the year of receipt. For considering the hardship of the assessee 50 per cent. deduction was allowed under section 57(iv) of the Act. (AY. 2012-13)

Gunwant Kaur v. CIT (2022) 96 ITR 21 (SN) (Amritsar) (Trib)

S. 56: Income from other sources – Purchase consideration and stamp valuation – Remand report – Deletion of addition is held to be justified . [S. 56(2) (vii)(b)]

In the matter where The Commissioner (Appeals) sent this issue back to the Assessing Officer for his examination and to submit a remand report. Based on the contents of the remand report the Commissioner (Appeals) observed that the assessee had declared the purchase consideration at a figure higher than that of the stamp valuation authority which had been verified by the Assessing Officer in the remand report and reversed the addition. It was held that the Commissioner (Appeals) had given an opportunity to the Assessing Officer to examine the issue and, based on his remand report, had concluded the matter. There was no infirmity in the order passed by the Commissioner (Appeals). (AY. 2014-15)

ITO v. Hiteshbhai Bhikhabhai Sutariya (2022)96 ITR 57 (SN) (Surat) (Trib)

S. 56: Income from other sources - Purchase of property for consideration less than stamp duty value — Agreement executed on 31-3-2013-Addition is not valid . [S. 56(2)(vii)(b)(ii)]

The Tribunal held that the agreement was executed on March 31, 2013, i.e., during the assessment year 2013-14, and the provisions of section 56(2)(vii)(b) of the Act as applicable to the assessment year 2013-14 would apply. Registration of the agreement on the subsequent

date would not alter the situation. The registration of the agreement was just compliance with a legal requirement under the Registration Act of 1908. Addition was deleted . (AY.2014-15)
Rajib Rathindra Saha v. ITO (IT) (2022)95 ITR 216 (Mum) (Trib)

S. 56 : Income from other sources -Share premium – Vauation of shares – Additional evidence - Exempted party – Matter remanded. [S. 56(2)(viib)]
During appeal proceedings, assessee prayed for admission of certain additional evidence to prove that the transa tion with exempted party . Additional evidence was admitted and the matter was remanded to the Assessing Officer . (AY 2013-14)
Retail Quotient Research (P)Ltd. v. ACIT (2022) 215 TTJ 17 (UO) / 138 taxmann.com 533 (Chd)(Trib)

S. 56 : Income from other sources-Buying back of shares-Holding company-Capital redemption reserve-Addition cannot be made when the shares are bought back from holding company. [S. 56(2)(viia)]
Assessee-company bought back its own 28 lacs shares from its holding company at face value, Rs. 100 per share, whereas book value of such shares was Rs. 146.817 per share. It also created capital redemption reserve amounting to Rs. 28 crores being sum equal to nominal value of shares that were bought back by transferring amount from surplus available in profit and loss account. Assessing Officer applied provisions under section 56(2)(viia) and taxed the difference between fair market value of shares and consideration paid when they were bought back and made addition. Held that the shares should become property of recipient company in order to apply provisions under section 56(2)(viia) and in that case such shares should be shares of other company and could not be its own shares. Accordingly provision under section 56(2)(viia) would be inapplicable to cases of buy back of own shares and thus, addition made by invoking provisions under section 56(2)(viia) is deleted. (AY. 2013-14, 2014-15)
VITP (P.) Ltd. v. DCIT (2022) 197 ITD 395 (Hyd) (Trib.)

S. 56 : Income from other sources-Valuation of shares-Book value of liability shown in balance sheet has to be reduced for purpose of valuation and determination of FMV of unquoted equity shares [Rule, 11UA]

Held that valuation date means, date on which property or consideration, as case may be, was received by assessee which in instant case was date on which shares were allotted. Accordingly, the book value of liability shown in balance sheet has to be reduced for purpose of valuation and determination of FMV of unquoted equity shares. Accordingly, the additions made by Assessing Officer is deleted. (AY. 2011-12)
ITO v. Mystical Infaratech (P.) Ltd. (2022) 197 ITD 794 (Mum) (Trib.)

S. 56 : Income from other sources-Valuation of converted compulsory convertible preference shares (CCPS) into equity shares –Shares at premium-Matter remanded for readjudication. [S. 56(2)(viib), R. 11UA]
Assessee-company, engaged in real estate business in domestic market through e-platform, converted compulsory convertible preference shares (CCPS) into equity shares of Rs. 100 each at a premium of Rs. 1500 per share. Assessing Officer held that valuation made by assessee adopting DCF method was far from reality and, thus, recomputed book value per share by applying net book value method and made addition towards differential valuation amount in assessee's total income under section 56(2)(viib) of the Act. Held that valuation of

shares was found to be flawed since projections grossly varied with financial results and premium was exorbitantly high. It was further noted that assessee though had furnished a valuation report however it was not supported by technical report, revenue and cost projection, cash flow justification management plan etc.. Assessee failed to justify valuation by furnishing an acceptable valuation report, matter was to be remanded back to file of Assessing Officer to provide assessee with another opportunity to justify valuation of said shares and thereafter re adjudicate issue. (AY. 2015-16)

S.A. Metro Plots (P.) Ltd. v. ITO (2022) 197 ITD 816 (Chennai) (Trib.)

S. 56 : Income from other sources-Share premium –Conversion of CCDs in to equity shares-Provision is applicable-Receipt of any consideration which could not be limited to receipt of money-Provision is not applicable to with respect to share premium amount received from non-resident angel investors for issuance of equity shares-DCF method for valuation-Assessing Officer was not empowered to disregard DCF valuation. [S. 56(2)(viib), R. 11UA]

Assessee issued equity share at premium to various parties which included venture capital funds, non-residents and other angel investors. Assessing Officer held that issue of equity shares was made over and above FMV. He added the entire issue price of equity shares under section 56(2)(viib) as income from other sources. On appeal the assessee contended that amounts for which additions were made pertained to CCDs which were issued in previous years and were converted into equity shares in relevant assessment year. Assessee claimed that entire consideration was received at time of issuance of CCDs and no payment was entailed during conversion of same. Held that from investment agreement that on subsequent conversion of CCDs entailed receipt of certain consideration by assessee which included discharge of interest obligation, etc.. Section 56(2)(viib) envisages wider outlook to receipt of any consideration which could not be limited to receipt of money, thus, section 56(2)(viib) would be applicable in instant case where conversion of CCDs into equity share entailed receipt of consideration in form of total issue price including premium. Held that provisions of section 56(2)(viib) would not be applicable with respect to share premium amount received from non-resident angel investors for issuance of equity shares. Held that the Assessing Officer was not empowered to disregard DCF valuation as carried out by valuer and such action of rejecting valuation report is not valid. (AY. 2013-14)

Milk Mantra Dairy (P.) Ltd. v. DCIT (2022) 196 ITD 333 / 220 TTJ 352 (Kol) (Trib.)

S. 56 : Income from other sources-Sale of shares at a premium-Addition made on account of the difference between FMV and actual consideration received by the assessee in terms of section 56(2)(viib) was justified [S. 56(2)(viib), R.11UA]

Assessee engaged in real estate business, allotted 1.25 lakh equity shares to another company. Shares were issued at a premium.The AO held that the FMV of shares was determined at Rs. 3560.77 per share as per rule 11UA, but shares were issued at Rs. 3600 per share and made the addition of Rs. 48.75 lakh based on a differential of Rs. 39 per share under section 56(2)(viib) of the Act. CIT (A) affirmed the order of AO. On appeal, the Tribunal held that provisions of section 56(2)(viib) or rule 11UA nowhere provides for rounding off to nearest rupee or multiple of ten or hundred. If the legislature intended to provide rounding off it would be specifically provided under section 56(2)(viib) of the Act. Accordingly, addition made on account of the difference between FMV and actual consideration received by assessee in terms of section 56(2)(viib) was justified. (AY. 2014-15)

Royal Accord Realtors (P.) Ltd. v. DCIT (2022) 195 ITD 287/ 220 TTJ 892 / 220 DTR 150 (SMC) (Mum) (Trib.)

Rokdale Realtors (P) Ltd v .Dy.CIT (2022) 195 ITD 287 220 TTJ 892 / 220 DTR 150 (SMC) (Mum)(Trib)

S. 56 : Income from other sources-Interest on Enhanced Compensation-Interest received on compensation or on enhanced compensation is taxable under section 56(2)(viii) read with section 145A(b) applicable with effect from 1-4-2010 [S. 56(2)(viii) 145A]

Held that legislature has inserted section 56(2)(viii) vide Finance Act, 2009 with effect from 1-4-2010 holding interest received on compensation or on enhanced compensation referred to in 'clause (b) of section 145A' as treating corresponding income as income from other sources. Accordingly, the order of the Assessing Officer is affirmed. (AY. 2013-14)

Madhav Pandharinath Kande. v. ITO (2022) 195 ITD 579 (Pune) (Trib.)

S. 56 : Income from other sources-Bonus shares-Provisions of section 56(2)(vii)(c) are not applicable to bonus shares. [S. 56(2)(vii)(c)

Assessee, a shareholder, received bonus shares. The Assessing Officer held that assessee had received property in form of bonus shares without consideration and, therefore, the mischief of section 52(2)(vii)(c) was applicable. Held that provisions of section 56(2)(vii)(c) were not applicable to bonus shares (AY. 2015-16)

DCIT v. Bhanu Chopra. v. (2022) 195 ITD 767 (Delhi) (Trib.)

S. 56 : Income from other sources-Gift-Capital or revenue-Consideration-Suit properties-Sum received for giving up his rights to contest will could not be said to have been received without consideration and hence, could not have been brought to tax-Sum received is capital receipt cannot be taxed as capital gains [S. 4, 45, 56(2)(vii)(a)]

After demise of father the assessee filed a suit for partition and separate possession of his share of properties belonging to father. Assessee received from his mother a consolidated amount of Rs. 1.60 crores as per decree of Court in full satisfaction of his right, title and interest in properties of family and thus litigation came to an end. Court passed a decree in terms of comprise agreement between parties.The Assessing Officer held that all properties of father were given to mother under will and belonged to her absolutely. The assessee had no rights whatsoever over property and therefore, sum of Rs.1.60 crores received by assessee from his mother was in nature of income chargeable to tax in hands of assessee. On appeal, Commissioner(Appeals) held that said receipt fell within category of income specified in section 56(2)(vii)(a) of the Act. On appeal the Tribunal held that all items of suit properties were bequeathed to assessee's mother under will could not be basis to hold that assessee did not have any rights whatsoever. Assessee had a right to question validity of will and had in fact filed suit for partition and separate possession of his share of suit properties. Therefore, sum received by assessee for giving up his rights to contest will could not be said to have been received without consideration and hence, could not have been brought to tax under section 56(2)(vii)(a) of the Act. The Tribunal also held that the sum received by assessee to give up his rights to contest will was not be in the nature of revenue receipt, but was a capital receipt not chargeable to tax, thus, sum so received could not be brought to tax as capital gain under section 45. (AY. 2012-13)

K. V. Sridhar. v. ITO (2022) 194 ITD 450 / 220 DTR 348(2023) 221 TTJ 676 (Bang) (Trib.)

S. 56 : Income from other sources-Retired professional cricketer received ex-gratia payment from BCCI-Capital or revenue-Matter remanded to ascertaining whether registration of BCCI was restored under section 12AA for relevant assessment year or not [S. 4, 12AA, 28(iv), 56(2)(vii))]

Assessee is a retired professional cricketer who received ex-gratia payment as one-time benefit from BCCI and claimed same as capital receipt not liable to be taxed. Assessing Officer held that said sum would be taxable under section 56(2)(vii) on ground that BCCI did not have registration under section 12AA. On appeal Commissioner (Appeal) upheld said additions and further held that said sum was liable to be taxed under section 28(iv).On appeal, the Tribunal remanded the matter back to Assessing Officer to examine whether BCCI was having registration under section 12AA for relevant assessment year and if satisfied said amount would not be taxable under section 56(2)(vii) of the Act. (AY. 2013-14)

Sunil Bandacharya Joshi. v. DCIT (2022) 194 ITD 725 (Bang) (Trib.)

S. 56 : Income from other sources-Share premium-Valuation report-Apart from determination of FMV of shares under rule 11UA, intrinsic value is also one of prescribed method as per section 56(2)(viib)(a)(ii), but higher of valuation as per section 56(2)(viib)(a)(i) or (ii) has to be considered by Assessing Officer before applying those provisions -Section 56(2)(viib) is applicable in year of issue of shares and not in year of receipt of premium. [S.56(2)(viib), R. 11UA]

Held that assessee issued/allotted equity shares at a premium, however, did not file any valuation report to substantiate fair market value of shares issued in terms of section 56(2)(viib)(a)(i) and rule 11UA, Assessing Officer could not have accepted intrinsic value without calling for a value in terms of rule 11UA to find out whether clause (i) or clause (ii) of Explanation to section 56(2)(viib) would be applicable. Section 56(2)(viib) is applicable in year in which shares were issued and not in year of receipt of premium. (AY. 2015-16)

Medicon Leather (P) Ltd. v. ACIT (2022) 194 ITD 44 (Bang) (Trib)

S. 56 : Income from other sources-Allotment of shares at premium-Fair market value of shares-Neither Assessing Officer, nor Commissioner (Appeals) had determined fair market value of shares in accordance with rule 11UA-Matter remanded to the Commissioner (Appeals) to determine fair market value of shares by following any of prescribed methods. [S. 56(2)(viib), R. 11UA]

Assessee issued/allotted shares at a premium, however, neither Assessing Officer, nor Commissioner (Appeals) had determined fair market value of shares in accordance with rule 11UA and Assessing Officer had merely taken face value of shares as deemed fair market value and share premium was assessed as income from other sources under section 56(2)(viib) of the Act.Matter referred to Commissioner (Appeals), who shall call for a remand report from Assessing Officer, who shall determine fair market value of shares by following any of prescribed methods. (AY. 2016-17)

IB Communications Network (P.) Ltd. v. ITO (2022) 194 ITD 277 (Bang) (Trib.)

S. 56 : Income from other sources-Share premium-Valuation of shares-Tentative balance sheet after audit by auditors, balance sheet audited subsequently would be sufficient compliance of provisions of rule 11U(b) [S. 56(2)(viib), R. 11UA]

Held that where on date of allotment of shares i.e 31-3-2016, a balance sheet was drawn by assessee albeit said balance sheet was unaudited on that date and FMV of shares was determined on basis of said balance sheet, however, said balance sheet was subsequently audited by Auditors of company and ostensibly, there was no difference in financials of tentative balance sheet drawn on 31-3-2016 after audit by Auditors, said balance sheet fell within meaning of 'Balance Sheet' as envisaged under rule 11U, hence, there was no error in FMV of shares determined by assessee on basis of said balance sheet drawn on 31-3-2016. (AY. 2016-17)

Electra Paper and Board (P.) Ltd. v. ITO (2022) 194 ITD 391 (Chd) (Trib.)

S.56:Income from other sources-Transfer-The assessee had acquired right in the ownership of the flat at the time of issuance of allotment letter-Date of allotment letter is to be considered as date of purchase-Addition made on the basis of stamp valuation on the date of registration was deleted.[S. 2(47), 56(2)(vii)(b)]

During the financial year 2010-11, the assessee had booked property in a building known as " Shrikant Chambers-II" at a total consideration of Rs 2. 60 crores. The developer issued allotment letter dated 19-5-2010. The entire consideration was paid till financial year 2011-12. The registered sale deed was executed dated 1-8-2013. The Assessing Officer for the assessment year 2014-15 made addition of Rs 5. 31 crores u/s 56 (2)(vii)(b) of the Act being the difference between the Stamp Duty valuation as on date of registration less actual consideration paid. On appeal the CIT(A) deleted the addition. On appeal by the Revenue, dismissing the appeal, the Tribunal held held that a bare perusal of the first Proviso to section 56(2)(vii)(b) of the Act would show that where the date of agreement fixing the amount of consideration for transfer of immovable property and the date of registration are not same, the stamp duty value as on the date of the agreement may be taken. The provisions of clause (b) to section 56(2)(vii) were amended by the Finance Act, 2013. The Memorandum to the Finance Act, 2013 explaining the reason for amending the provisions of section 56(2)(vii)(b) of the Act states that the purpose for introducing proviso to clause (b) to section 56(2)(vii) of the Act was to avoid taxable differential arising due to time gap between the booking of a property and registration of sale deed.

In the instant case, on the date of allotment the building was under construction and even on the date of registration of sale deed the assessee had not taken possession of the immovable property. The assessee had acquired right in the ownership of the flat at the time of issuance of allotment letter. Therefore, in the facts of the case, stamp duty value as on the date of allotment of flat is relevant. Followed PCIT v. Vembu Vaidyantahn (2019) 413 ITR 248 (Bom)(HC) (SLP of revenue is dismissed PCIT v. Vembu Vaidyanathan (2019) 265 Taxman 535 (SC) (ITA No. 7120/Mum/2018 dated November 09, 2022) (AY 2014-15)

ITO v. Rajni D. Saini (Mum)(Trib)(www.itatonline.org

S. 56 : Income from other sources –Stamp value-Market value of flat on agreement date is to be considered and not the value of registration of sale agreement-Addition is deleted. [S. 45, 56(2)(vii)(b)]

The assessee was allotted flat on 17-10-2011 for consideration of Rs 70 lakhs. The flat was registered on 23-7-2013. The stamp value as on date of registration was Rs 1,00, 2850.. The AO made addition of Rs 30, 28, 500 u/s 56(2)(vii)(b) of the Act treating the stamp value on the date of Registration. Order of AO is affirmed by the CIT(A). Allowing the appeal of the Assessee the Tribunal held that the value as on date fixing the price for purchase price i. e 17-10 2011 (Date of allotment letter) should be adopted. Tribunal relied on following judgements, Siraj Ahmed Jmalbhai Bora v. iTO (ITA No. 1886/M /2019 dt 28-10 2020 (Mum)(Trib)),Radha Kisan Kungwani v. ITO (2020) 185 ITD 433 (Jaipur)(Trib), Saanjay Dattatraya Dapodikar v.ITO (ITA No. 1747/PN / 2018 dt. 30 /4 /2019 (Pune)(Trib), Ashutosh Jha v. ITO (ITA No. 188 /Ranchi 2019 dt 30-4-2021 (Ranchi)(Trib), Dy.CIT v. Deepak Sashi Bhusan Roy (ITA No.3204 & 3316 /M/2016 dt. 30-7-2018 (Mum)(Trib), Mohd Ilyas Ansari v. ITO (ITA No. 6174 /M/ 2017 dt 6-11-2020 (Mum)(Trib) (ITA No. 56/Mum/ 2021 dt 5-9-2022 (AY. 2014-15)

Sanjraj Mehta v.ITO (Mum)(Trib) www.itatonline.org

S. 56 : Income from other sources-Advance received for purchase of property-Cannot be held as without consideration-Deletion of addition is held to be justified [S. 56(2)(vi), 68]

Dismissing the appeal of the Revenue, the Tribunal held that a sum received as advance or loan which is found to be correct there is a precondition of its return to be made to creditor party. Therefore, the sum received cannot be said to be without consideration hence the provision of section 56(2)(vii) is not applicable. The AO has not invoked the provision of S. 68 of the Act. (TS.-50-ITAT-2022 (Hyd) (AY. 2009-10) (Dt. 5-1-2022)

ITO v. Hajeebu Venkata Seeta (2022) BCAJ-March-P. 39(Hyd)(Trib)

S. 56 : Income from other sources-Bonus shares-Provisions of section 56(2)(vii)(c) were not applicable to bonus shares [S. 56(2)(vii)(c)]

The assessee held shares in a company. During the year he received certain bonus shares being allotted by the company. The Assessing Officer held that the assessee had received property in the form of bonus shares without consideration and, therefore, mischief of section 56(2)(vii)(c) was applicable. He further computed the fair market value of bonus shares at a certain amount and added said amount to the income of the assessee. On appeal, the CIT(A) held that the provisions of section 56(2)(vii)(c) were not applicable to the bonus shares and deleted the addition. On appeal by Revenue, the Tribunal affirmed the order of CIT(A). Referred Dy. CIT v. Dr. Rajan Pai (2017) 82 taxmann.com 347 (Bang)(Trib),Sudhir Menon HUF v. A CIT (2014) 148 ITD 260 (Mum) (Trib), CIT v. Dalmia Investment Co. Ltd (1964) 52 ITR 567 (SC). (AY. 2015-16)

JCIT v. Bhanu Chopra (2022) 195 ITD 767 (Delhi) (Trib)

S. 56 : Income from other sources-Joint venture agreement-Shares issued to resident venture and non-resident venture at a differential price-DCF method-Valuation given by expert cannot be rejected-Addition is not valid [S. 56(2)(viib), R.11UA]

Assessee company was incorporated on basis of joint venture agreement between a resident company and a non-resident company. Both joint venture partners agreed to contribute

project cost in ratio of 40 per cent by non-resident and 60 per cent by resident. Assessee issued shares at Rs. 60 per share to non-resident shareholder while shares to resident company were issued at Rs. 40 per share. AO rejected said valuation of shares for reason that shares issued to resident company were at much lesser price than shares that were allotted to non-resident company. AO also held that there was loss in previous assessment years, therefore, value determined by DCF Method was not correct. The AO made addition under section 56(2)(viib) of the Act. On appeal the CIT(A) deleted the addition. On appeal by Revenue,dismissing the appeal, the Tribunal held that the AO had fallen in error in not considering objectively facts and circumstances of case as reflected in joint ventures agreement between resident and non-resident entity which showed that project costs of assessee was to be funded in ratio of non-resident entity paying 40 per cent of project cost and resident entity paying 60 per cent of project cost. As per the joint ventures agreement there was difference in share price as issued to resident company and to non-resident company. Difference in amount had occurred due to difference in shares of capital contribution to project cost. Order of CIT(A) is affirmed.Referred Duncans Industries Ltd. v. State of UP 2000 ECR 19 (SC), Cinestaan Entertainment (P.) Ltd. v. ITO (2019) 177 ITD 809 (Delhi)(Trib).(AY. 2014-15)

DCIT v. Mais India Medical Devices (P)(Ltd (2022) 195 ITD 94 (Delhi) (Trib)

S. 56 : Income from other sources-Flat booked under construction was not constructed-Alternative flat was allotted in another building which was under construction-Difference between stamp duty value of the alternative flat and the consideration is not chargeable to tax u/s 56(2)(vii) of the Act. [S. 2(27), 54, 56(2)(vii)]

The assessee booked the flat No 4707 with India Bulls Sky suits. Because of restrictions the booking was cancelled and shifted to flat No 3907 in the same project. Since the construction was not materialised the assessee was allotted flat in another project by the name Sky Forest without any change in the terms of the purchase. The formal agreement was entered in to on 4 th May 2015. There was no change in purchase price fixed for allotment in 2010. The AO added the difference between consideration paid and stamp value under section 56(2)(vii) of the Act. On appeal the CIT(A) deleted the addition. On appeal by Revenue, dismissing the appeal, the Tribunal held that it was the same booking which dated back 24 th September 2010 and the assessee has not made any extra payment. When the booking was made flat was not in existence and it was a property to be constructed in future date. Order of CIT(A) is affirmed. (TS. 450-ITAT-2022 (Mum) (AY. 2016-17) (Dt. 9-5-2022)

ITO v. Sanika Avadhoot (Mrs) (2022) BCAJ-August-P. 66 (Mum)(Trib)

S. 56 :Income from other sources-Purchase of immovable property for value less than stamp duty value-Amendment is applicable for assessment year 2014-15 and subsequent years-Amendment is not retrospective-Unable to explain the source of cash payment-Assessable as undisclosed income [S. 56 (2)(vii)(b), 69].

Held that the Finance Act, 2013 was enacted at the beginning of financial year 2013-14 which would be applicable to the assessment year 2014-15. Therefore, the assessee's contention that the amended provisions would be applicable for assessment year 2015-16, was not tenable. The Tribunal however stated that the Commissioner (Appeals)' observation

that the provisions of section 56(2)(vii)(b) of the Act were explanatory and hence retrospectively applicable, were not sustainable. Tribunal also held that neither did anyone appear nor was any document filed to show the source of the cash payment made for the purchase of the property. Order of CIT(A) is affirmed. (AY.2014-15)

Balaram Suryavanshi v. ITO (2022)93 ITR 4 (SN)(Kol) (Trib)

S. 56 : Income from other sources-Share capital at premium-Discount cash flow method (DCF)-Net asset method (NAV)-AO could not adopt NAV method merely for reason that there was deviation in actual figures from projected figures shown in DCF method-Deletion of addition is affirmed.[S. 56(2)viib), R. 11U, 11 UA]

Assessee issued share capital at premium and valued shares adopting discounted cash flow method (DCF method). Assessing Officer directed assessee to furnish valuation of shares as per rules 11U and 11UA by using net asset method (NAV) on ground that actual performance of assessee-company showed losses whereas DCF statement showed projected profits. Assessing Officer held that there was wide variation between valuation of shares as per NAV method and DCF method and thus, made additions under section 56(2)(viib) of the Act. CIT(A) deleted the addition. On appeal the Tribunal held that for purpose of determining fair market value of unquoted shares provisions of rule 11UA (2) gave right to assessee to exercise options available for valuation of shares, therefore, Assessing Officer could not withdraw DCF method exercised by assessee by adopting NAV method of valuation merely for reason that there was deviation in actual figures from projected figures the Assessing Officer was not justified in rejecting the method adopted by the Assessee required to examine method adopted by assessee and additions. (AY. 2013-14)

Dy.CIT v. Credtalpha Alternative Investment Advisors (P.) Ltd. (2022) 193 ITD 502 / 94 ITR 596/ 215 TTJ 801/ 210 DTR 100 (Mum) (Trib.)

S. 56 : Income from other sources-Fair market value of property-Purchase of property-Stamp valuation –Addition was not valid-Matter remanded. [S. 56(2)(vii)(b)(ii)]

During year, assessee made an investment towards purchase of a property. Assessing Officer held that market price of said property as per Stamp Valuation Authority was higher hence made addition u/s 56 of the Act. On appeal, the Tribunal held that as the property under consideration was situated in a slum area, market value of same was much lower than value of other buildings in neighbouring areas hence the Assessing Officer should have referred the matter to valuation Officer. Matter remanded (AY. 2014-15)

Kiran R. Sawlani. v. ITO (IT) (2022) 193 ITD 852/ 215 TTJ 654 / 210 DTR 17 (Mum) (Trib.)

S. 57 : Income from other sources-Deductions-Advance towards purchase of properties-Not necessary that expenses should have resulted in income-Sufficient if nexus is established between expenses and income-Question Before Tribunal regarding extent of deduction allowable-Tribunal does not have power to disallow entire Deduction [S.36(1)(iii) 57(iii), 254(1)]

The assessee was engaged in development and purchased, sold and constructed and leased properties. The assessee was sanctioned a loan from Union Bank of India. The assessee paid

certain amount as advance towards purchase of properties. However, on account of adverse market conditions, the assessee decided to withdraw from the transaction and requested party to refund the earnest money. The party refunded the amount. The assessee thereafter lent money to other shareholders and made inter corporate deposits as against interest. The assessee claimed the interest paid as allowable deduction. On appeal, the Tribunal disallowed the entire interest expenditure. On further appeal, the Court held that on the facts and circumstances of the case, the assessee was entitled to deduction under section 57(iii) of the Act. In any case, the Tribunal exceeded its jurisdiction in disallowing the entire interest expenditure as the power of the Tribunal was limited to passing an order in respect of subject matter of the appeal. Relied on Seth R.Dalmia v.CIT (1977) 110 ITR 644 (SC), CIT v. Rajendra Prasad Moody (1978) 115 ITR 519 (SC), CIT v. Corawara Plastic and General Industries (P) Ltd (2007) 289 ITR 224 (All)(HC) (AY.2009-10)

West Palm Developments LLP v.ACIT (2022)445 ITR 511 (Karn)(HC)

S. 57 : Income from other sources-Deductions-Interest-Not brought on record any documentary evidence to show that it had incurred interest expenditure as against income assessed under head 'Income from other sources'-Disallowance of interest expenditure was confirmed. [S. 56]

Held that the assessee had not brought on record any documentary evidence to show that it had incurred interest expenditure as against income assessed under head 'Income from other sources', disallowance of interest expenditure is held to be justified (AY. 2016-17)

Yash Vardhan Arya. v. ITO (IT) (2022) 196 ITD 276 /97 ITR 5(SN) (Bang) (Trib.)

S. 57 : Income from other sources-Deductions-Expenditure is held to be allowable [S. 56, 57(iii)]

Held that on the issue of the addition made by the Assessing Officer on account of disallowance of the assessee's claim to deduction under section 57(iii) of the Act, the Tribunal had taken a consistent view in the assessee's favour for several earlier years there was no justifiable reason to interfere.(AY. 2014-15, 2015-16)

Dy. CIT v. Sports Club Of Gujarat Ltd. (2022)94 ITR 54 (SN)(Ahd)(Trib)

S. 64 : Clubbing of income-Spouse-Rent paid to wife-Investment in the House property by wife from her own source and loan from Bank-Source of fund established clubbing provision do not apply-There is no legal bar for paying house rent to wife [S. 10(13A), 24, 64(1)(ii)]

The assesse paid rent to his wife and claimed exemption u/s 10(13A) of the Act. The AO clubbed the rental income after allowing deduction u/s 24 of the Act.On appeal CIT(A) also affirmed the order of the AO on the ground that the investment in house property was not made by the wife from her own source of income and the husband cannot pay rent to wife. On appeal, the Tribunal held that Investment in the House property by wife from her own source and loan from Bank. Source of fund established clubbing provision do not apply.

Tribunal also held that there is no legal bar for paying house rent to wife. Clubbing of income was deleted. (AY. 2013-14)

Abhay Kumar Mittal v.DCIT (2022) 194 ITD 224 (Delhi)(Trib)

S. 68 : Cash credits-Firm-Capital account-Onus was on assessee firm to prove the capacity of the partners who introduced cash as capital in the assessee firm-Amendment brought by Finance Act, 2021 which requires establishment of 'source of source' is clarificatory in nature. [S. 260A]

Assessee, a partnership firm, was reconstituted on 1st April 2004 on which date Rs. 3 lakhs each was introduced as capital in the firm by 3 incoming partners. As the assessee was unable to prove credits in the capital account and also did not produce the partners for examination, Assessing Officer treated 50% of the total amount introduced as unexplained and added the same as income of the assessee firm. CIT(A) as well as Tribunal upheld the addition on the ground that no evidence had been provided to support the claim that the partners had the capacity to introduce cash of Rs. 3 lakh as capital of the assessee firm. High Court dismissed the assessee's appeal. High Court rejected the assessee's submission that unexplained cash credit should have been taxed in the hands of the individual partners and not in the hands of the firm. High Court held that the onus was on the assessee firm to demonstrate that the money introduced as capital of the reconstituted firm was sufficiently explained with reference to Bank accounts or other documents of credible nature. High Court also held that the amendment in section 68 by the Finance Act, 2021 which requires proof of 'source of source' to be established is clarificatory in nature and that it was incumbent on the assessee firm to satisfactorily explain the source of cash credits. (AY. 2005-06)

Basanta Maharana v. ITO (2022) 218 DTR 62 / 328 CTR 993 (Orissa)(HC)

S. 68 : Cash credits-Loans –Information from Investigation wing-Bogus accommodation entries-Statement was recorded and affidavits filed-Opportunity of cross examination was not granted-Merely on the basis of information from Investigation wing addition is not justified-Order of Tribunal affirmed. [S. 131, 133(6), 153A, 260A]

On the basis of information from Investigation Wing that lenders from whom assessee acquired loans were indulged in bogus accommodation entries the Assessing Officer made addition as cash credits in respect of loan from various parties.On appeal, the CIT(A) held that the Revenue had recorded statement of director of a lender who confirmed transaction of loan and even assessee produced affidavits and notices issued by revenue under sections 131 and 133(6) which were duly complied with by its creditors. CIT(A) also held that there was no link found in documents and financial statements of companies concerned and the assessee was not granted an opportunity to cross-examine person whose statements were recorded during investigation. Accordingly the addition was deleted. Order of CIT(A) was affirmed by the Tribunal. On appeal by Revenue High Court affirmed the order of Tribunal.

PCIT v. Oriental Power Cables Ltd. (2022) 143 taxmann.com 370 (Raj) (HC)

Editorial : Notice issued in SLP filed by Revenue, PCIT v. Oriental Power Cables Ltd. (2022) 289 Taxman 625 (SC)

S. 68 : Cash credits-Inflated credit balance-Not furnished evidence in spite of sufficient opportunity was granted-Addition is held to be justified.

Assessee gave an explanation, but Assessing Officer considered it to be vague, unsubstantiated and illogical and therefore rejected it. Accordingly, inflated credit balance of RIL was added as income of assessee. On appeal, the Court held thatsufficient opportunity was granted to assessee to furnish evidence to prove genuineness of such credit balance, however, assessee was unable to avail of such opportunity. Addition on account of unexplained/non-existence alleged sundry creditors was justified. (AY. 2003-04)
Jaiswal Plastic Tubes Ltd. v. ACIT (2022) 288 Taxman 779 / 215 DTR 161/ 327 CTR 757/ (2023) 451 ITR 540 (Orissa)(HC)

S. 68 : Cash credits-Search-Statement of director-Deletion of addition is held to be justified [S. 132, 153A]
Assessing Officer solely based on statements of Directors recorded during a search operation conducted under section 132 on assessee, made addition under section 68 without probing deeper into income tax returns of creditor companies and without scrutinizing documents furnished by assessee to prove genuineness of such credits.On appeal, Tribunal deleted the addition. High Court affirmed the order of the Tribunal.

PCIT v. Dwarka Prasad Aggarwal (2022) 140 taxmann.com 32 (Delhi)(HC)

Editorial : SLP dismissed as with drawn due to low tax effect, PCIT v. Dwarka Prasad Aggarwal (2022) 288 Taxman 16 (SC)

S. 68 : Cash credits-Burden of proof on Revenue to establish that credits represented undisclosed income-No evidence that explanation of assessee was false-Allegation of money laundering is a very serious allegation and the effect of a case of money laundering under the relevant Act is markedly different-The order passed by the Assessing Officer was utterly perverse and had been rightly set aside by the appellate authorities-Deletion of addition is justified.
Dismissing the appeal of the Revenue, the Court held thatthe allegations against the assessee were in respect of thirteen transactions. The Assessing Officer issued show-cause notice only in respect of one of the lenders. The assessee responded to the show-cause notice and submitted the reply. The documents annexed to the reply were classified under three categories namely : to establish the identity of the lender, to prove the genuineness of the transactions and to establish the creditworthiness of the lender. The Assessing Officer had brushed aside these documents and in a very casual manner had stated that mere filing the permanent account number details, balance sheet did not absolve the assessee from his responsibility of proving the nature of transaction. There was no discussion by the Assessing Officer on the correctness of the stand taken by the assessee. Thus, going by the records placed by the assessee, it could be safely held that the assessee had discharged his initial burden and the burden shifted on the Assessing Officer to enquire further into the matter which he failed to do. In more than one place the Assessing Officer used the expression "money laundering". Such usage was uncalled for as the allegation of money laundering is a very serious allegation and the effect of a case of money laundering under the relevant Act is markedly different. The order passed by the Assessing Officer was utterly perverse and had been rightly set aside by the Commissioner (Appeals). The Tribunal had rightly deleted the additions under section 68.(AY.2015-16)

PCIT v. Sreeleathers (2022)448 ITR 332 (Cal)(HC)

S. 68 : Cash credits –Bogus purchases-Credit balance of the associate parties-Purchase transactions-Identity, creditworthiness and genuineness of the transactions of purchases made is proved-Deletion of addition is affirmed-No substantial question of law.[S. 260A]

Dismissing the appeal of the Revenue, the Court held that identity, creditworthiness and genuineness of the transactions of purchases made is proved. Deletion of addition by the Tribunal is affirmed. No substantial question of law.(ITA No. 344 of 2022 dt. 20-09-2022)(AY. 2014-15)

PCIT v. Attire Designers Pvt Ltd (2022) 145 taxmann.com 188 (Delhi)(HC)

S. 68 : Cash credits-Speculation profit-Purchase and sales of commodities-Not registered stock broker-Genuineness of claim was not established-Order of Tribunal affirmed [S. 115BBE, 133(6)]

The assessee HUF had claimed speculation profit earned through a broker from purchase and sales of commodities made in a stock exchange, under head of income from business and profession. Assessing Officer issued a notice under section 133(6) to said broker as well as stock exchange to verify correctness of assessee's claim. In response to said notice, stock exchange stated that assessee was never registered with it by said broker and also that said broker was never active on exchange. The Tribunal confirmed the addition made by the AO. On appeal the High Court held that since genuineness of assessee's claim had not been established the order of Tribunal is affirmed. (AY. 2013-14)

Bhag Chand Chhabra v. PCIT (2022) 138 taxmann.com 32(Cal)(HC)
Editorial : SLP of assessee dismissed; Bhag Chand Chhabra v. Pr. CIT (2022) 287 Taxman 171 / 113 CCH 166 (SC)

S. 68 : Cash credits-Bank deposits-Unexplained money-Estimate of profit-Assessment-Withdrawal and cash deposited in bank-Trading activities-Tribunal was justified in estimating income at rate of 2 per cent of such amount deposited with bank.[S. 143(3)]

A huge amount of money was found to be deposited in bank account of assessee. Assessing Officer made addition under section 68 on account of such amount of money. Tribunal held that along with deposits made by assessee there were simultaneous withdrawals from its bank account leaving behind a negligible balance and such deposits and withdrawals from bank represented trading activities of assessee. Thus, assessee had discharged her burden by furnishing details that transactions reflected in bank statements were in connection with its business. Further, revenue had not brought anything on record suggesting that assessee had so much of income as computed by Assessing Officer. As such, deposits in bank could not be treated as income on standalone basis without considering consequent withdrawals. Tribunal estimated income at rate of 2 per cent of amount deposited with bank. High Court up held the order of Tribunal. Followed ITA No. 196 of 2020 dt. 5-10-2020. (2021) 430 ITR 253(Guj) (HC)) (AY. 2003-04)

PCIT v. Shitalben Saurabh Vora (2022) 138 taxmann.com 437 (Guj)(HC)

Editorial : Notice issues in SLP filed by Revenue, PCIT v. Shitalben Saurabh Vora (2022) 287 Taxman 221 /114 CCH 251 (SC)

S. 68 : Cash credits-Loans-Identity Creditworthiness and genuineness of lenders proved-Deletion of addition is justified.

Held that the assessee has discharged Identity creditworthiness and genuineness of lenders. Deletion of addition is justified.(AY. 2012-13 2013-14)

PCIT (Cent.) v. R.M. Commercial (P) Ltd. (2022) 287 Taxman 194 /113 CCH 348 (Cal.)(HC)

S. 68 : Cash credits-Sale consideration-Burden not discharged-Addition is justified [Indian Evidence Act, 1872, S. 106]

Dismissing the appeal, the Court held that the assessee had not examined his wife who was the vendor of the property and who received the sale consideration of Rs. 31 lakhs before the Assessing Officer to prove the source of income. Merely by producing the sale deed which showed the sale consideration of Rs.3,35,700 and trying to connect it with the deposit of Rs. 30 lakhs in the account on the very same day, that would not discharge the burden on the assessee to prove the source of income. The Tribunal was justified in sustaining the addition of income of Rs. 26,64,300 from the other source for the AY. 2011-12.(AY. 2011-12)

Joseph Thannikottu Korah v. PCIT (2022)446 ITR 723/ 213 DTR 185/ 326 CTR 621 (Ker)(HC)

S. 68 : Cash credits-Enquiry was conducted by the Assessing Officer-Transaction was through banking channel-Creditworthiness established-Statement of lenders recorded-Explanation was not found to be false-Deletion of addition is affirmed. [S. 131(1)(d)]

Dismissing the appeal of the Revenue the Court held that the loan transaction was through banking channel, creditworthiness established, statement of lenders were recorded. Merely on suspicion and without properly evaluating the genuineness of transactions addition cannot be made when the explanation offered by the assessee was not found to be false. (ITA No. 156 of 2018 dt 25-3-2022)(AY. 2009-10)

PCIT v. Aarhat Investments (2022) BCAJ-May-P. 47 (Bom)(HC)

S.68 : Cash credits-Capital gains-Penny stock –Shell company-Investment in shares were held for more than 10 years-Addition cannot be made as cash credits. [S. 10(38),45]

The assessee sold shares of Devika Proteins Limited claimed long-term capital gain as exempt.The Assessing Officer treated said gains as bogus and in nature of penny stock. He made additions to the said amount under section 68. On appeal, the CIT(A) held that since shares were in the nature of old investment, they could not be treated as penny stock by any stretch of the imagination. Tribunal upheld to view taken by the CIT(A). On appeal High Court held that the genuineness of investment in the shares by the assessee was substantiated

by him by producing copy of the transaction statement for the period from 1-6-2001 to 1-10-2010. The investment was made in the year 2000-01. The shares were retained for more than ten years and were sold after such a long time. These circumstances suggested that the investment was not bogus or investment made in penny stock. The shares were purchased in order to invest and not to earn exempted income by frequent trading in a short span. Order of Tribunal is affirmed. (AY. 2011-12)

PCIT v. Jagat Pravinbhai Sarabhai (2022) 142 Taxmann.com 247 (Guj)(HC) (2022) 289 Taxman 298 (Guj)(HC)

S. 68 : Cash credits-Reconciliation of statement-Supported by evidence-Order of Tribunal was affirmed [S. 260A]

Dismissing the appeal of the Revenue, the Court held that Tribunal re-examined entire facts and in particular reconciliation statement filed by assessee and found that reconciliation and explanation was duly supported by evidence which were on record. (AY. 2006-07)

PCIT v. AHW Steels Ltd. (2022) 286 Taxman 330/(2023) 450 ITR 709 (Cal)(HC)

S. 68 : Cash credits-Unsecured loans-Established genuineness and credit worthiness-Deletion of addition was justified.

Dismissing the appeal of the Revenue, the Court held that the assessee has established genuineness and credit worthiness of the lenders. Deletion of addition was justified. (AY. 2004-05 to 2010-11)

PCIT v. Inland Road Transport Ltd. (2022) 286 Taxman 613 (Cal)(HC)

S. 68 : Cash credits-Shares of Raj Darbar Group bought back the shares at much lower rate at which the shares were allotted-Addition was made not on the basis of seized materials or statements-Deletion is held to be justified [S. 132, 153C]

Proceedings under section 153C were initiated against assessee. During post-search enquiries, it was gathered that 25 companies applied and allotted shares of assessee-company and later family members/companies of Raj Darbar group bought back shares at a much lower price. Assessing Officer treated amount received from companies as unexplained cash credit under section 68 of the Act on the basis of extensive enquiries made by Investigation Wing.On appeal, the Tribunal held that the Assessing Officer had not made use of any seized documents while making additions to total income of assessee under section 68 and on other hand, had used extensive enquiries made by Investigating Wing, as basis to make said addition.Since no seized material or statement had been relied upon by Assessing Officer while making addition, the addition was deleted. High Court affirmed the order of the Tribunal. Relied on CIT v. Kabul Chawla (2015) 234 Taxman 300/ (2016) 380 ITR 573 (Delhi)(HC) (AY. 2003-04)

PCIT v. Vikas Telecom Ltd. (2022) 286 Taxman 238/ 209 DTR 373/ 324 CTR 341 (Delhi)(HC)

S. 68 : Cash credits –Lenders are assessed to tax-Confirmation was filed-Interest was paid-TDS was deducted-Notice issued u/s 133(6) were acknowledged-Order of Tribunal deletion of addition was affirmed-Court observed that the Assessing Officer should have desisted from using the general observation and expression "money Laundering" when it was never the case that there was any allegations of money laundering. [S. 133(6)]

Dismissing the appeal of the Revenue, the Court held that the Assessee has discharged the burden by filling confirmation letters, balance sheet and reply to notice issued u/s 133(6) of the Act. Court also held that the observation of the Assessing Officer that merely filing PAN details, balance sheet does not absolve the assessee from his responsibility of proving the nature of transactions is not valid in law. Court objected the general observation of the Assessing Officer such as paper companies and the expression "money Laundering" is held to be uncalled for as the allegation of money laundering is a very serious allegations and effect of case of money laundering under the relevant Act is markedly different. The Assessing officer should have desisted from using such expression when it was never the case that there was any allegations of money laundering. (ITA No 18 of 2022 dt 14-7-2022)(AY.2015-16)

PCIT v. Sreeleathers (2022) 448 ITR 332/ 143 taxmann.com 435 (Cal)(HC)

S. 68 : Cash credits-Penny Stock –Capital gains-Shares with increased value of about 2823%-Genuineness of price hike to be established-Onus on the assessee-Order of Tribunal is reversed-Addition as cash credit is affirmed-Revision is held to be valid. [S. 10(38], 45, 263]

The assessee had purchased 50,000 shares of the Surabhi Chemicals and Investment Ltd for Rs. 1,00,000/-on 16.03.2012 and 14.08.2012. Soon after the expiry of the period to become eligible for long term capital gains, the assessee sold those shares for Rs. 29,23,500/-. Sales were effected during the period from 04.12.2013 to 07.12.2013 and the long term capital gains (LTCG) was computed for Rs. 28,23,500/-. The assessee claimed the capital gains as exempt u/s 10(38) of the Act. The Assessing Officer held that within a short span to time of 17 to 21 months, the Assessee managed to sell the shares with increased value of about 2823% that to when the general market trend was recessive. Relying on the report of investigation wing the Assessing Officer denied the exemption and assessed the receipt u/s 68 of the Act. The CIT(A) dismissed the appeal of the Assessee. On appeal, the Income-tax Appellate Tribunal passed a common order in 90 appeals pertaining to penny stocks favouring the assessees. Revenue has filed appeals before the High Court.Honourable High Court held that the onus is on the assessee to establish the genuineness of the price hike. Merely demonstrating the financials of the company, volume of trade, transactions through banking channels, *inter alia,* will not suffice. The Assessee has to prove that the price of the share was not manipulated. Honourable High Court also held that the Tribunal committed a serious error in setting aside the orders of the CIT(A) who had affirmed the orders of the Assessing Officer and equally the Tribunal committed a serious error both on law and fact in interfering with the assumption of jurisdiction by the Commissioner under Section 263 of the Act. (Arising out of ITA No. 2623/ Kol/ 2018 dt. 20-6-2019 (SMC) (AY. 2014-15) ITA No.6 of 2022 dated June 14, 2022)

PCIT v. Swati Bajaj and Ors (2022) 446 ITR 56/ 288 Taxman 403/ 216 DTR 25 / 327 CTR 496 (Cal)(HC)

Editorial : Refer Udit Kalra v.ITO(Delhi) (HC) (2019)) 176 DTR 249/ 308 CTR 50 (Delhi) (HC), CIT v. Shyam R.Pawar (2015) 229 Taxman 256 (Bom)(HC)

S. 68 : Cash credits-Burden of proof — Assessee must prove identity of creditors, genuineness of transactions and creditworthiness of investors — Share capital — Cash deposits made in bank during demonetisation period — Addition of amounts under section 68 — Finding that burden has been discharged by assessee based on appreciation of evidence — Additions unsustainable

Dismissing the appeal, the court held that the findings of fact by the Tribunal as final fact finding authority were based on appreciation of evidence placed before it and were not shown to be perverse and its orders did not call for interference. Order of Tribunal deleting the addition is affirmed. *(*AY.2012-13 to 2017-18)

PCIT. v. Agson Global (P) Ltd. (2022)441 ITR 550/ 210 DTR 225/ 325 CTR 1/ 286 Taxman 519 (Delhi) (HC)

S. 68 : Cash credits-Search-Loose papers-Recovered from third party-Addition is not valid.

The Assessing Officer made addition on the basis of loose papers recovered from third party premises. CIT(A) deleted the addition which was affirmed by the Tribunal. On appeal High court affirmed the order of Tribunal. Referred CBI v. V.C.Shukla (1998) 3 SCC 410 (AY.2011-12)

PCIT v. Ganesh Plantation Ltd. (2022) 441 ITR 123 / 285 Taxman 35 / 326 CTR 751/ 213 DTR 352 (Guj) (HC)

S. 68 : Cash credits-Discharged the burden-Expenditure and donation-Disallowance is not justified-Order of Tribunal is affirmed [S. 37(1), 80G, 260A]

The Assessing Officer made an addition to the income on account of a transaction with an entity as bogus and also made disallowances of donation expenses and certain other expenses and hedging loss. The Commissioner (Appeals) deleted the additions made on account of the transaction with ST and the disallowances of hedging and part of the donation and other expenses. The Tribunal held that the transaction recorded in the books of account in the regular course of business was to be accepted as true and correct unless there was a strong evidence to rebut it. On appeal High Court affirmed the order of the Tribunal. (AY.2012-13)

PCIT v. Manoj Kumar Vipin Kumar (2022)441 ITR 632 (Raj) (HC)

S. 68 : Cash credits-Bank deposits-Addition as cash credits deleted-Income estimates at 2% of total deposits.

Assessing Officer made addition under section 68 on account of amount of money deposted in the bank.Tribunal held that along with deposits made by assessee there were simultaneous withdrawals from its bank account leaving behind a negligible balance and such deposits and withdrawals from bank represented trading activities of assessee. The assessee had discharged her burden by furnishing details that transactions reflected in bank statements

were in connection with its business. Further, revenue had not brought anything on record suggesting that assessee had so much of income as computed by Assessing Officer. Deposits in bank could not be treated as income on standalone basis without considering withdrawals. Accordingly, Tribunal estimated income at rate of 2 per cent of amount deposited with bank. High Court up held the order passed by Tribunal.(AY. 2003-04)

PCIT v. Shitalben Saurabh Vora(2021) 133 taxmann.com 441 (Guj) (HC)

Editorial : Notice is issued in SLP filed by revenue; PCIT v. Shitalben Saurabh Vora. (2022] 285 Taxman 549 (SC)

S. 68 : Cash credits-Share capital and share premium-All share holders are duly cross verified-Deletion of addition is held to be justified.

Dismissing the appeal, the Court held that in remand report, after examination of all share applications, Assessing Officer had concluded that transactions with all shareholders were duly cross-verified and found in order. Accordingly the order of Tribunal is affirmed. (AY. 2006-07)

PCIT v. Ambition Agencies (P.) Ltd. (2022) 284 Taxman 538 (Cal.)(HC)

S. 68 : Cash credits-Unsecured loans-Identity of creditors and genuineness of transitions and creditworthiness established-Deletion of addition is held to be justified.

Dismissing the appeal of the revenue, the court held that since all ingredients contemplated under section 68 had been duly satisfied on aspect of identity of creditors, genuineness of transactions and their creditworthiness, order of Tribunal deleting the addition is affirmed.(AY. 2012-13)

PCIT v. Gopal Heritage (P.) Ltd. (2022) 284 Taxman 406 (Guj.)(HC)

S. 68 : Cash credits – Evidence of persons not furnished- Identity and genuineness of transaction not proved- Additions sustained- Advance received from related parties- All evidences presented- Amount paid subsequently adjusted against sales made to these parties- Books of accounts accepted by Assessing Officer - Entries related to related parties accepted- Not -Co-borrowers - 3 HUF having independent identity- Carrying on business out of their own independent source- Addition is not justified. [S. 69A]

Held, that neither any confirmation nor any evidence regarding the addition had been furnished and, as such, the identity, genuineness of the transactions and creditworthiness had not been proved. Therefore, the addition made was justified. Held, that all parties who had advanced different amounts had filed confirmed copies of account mentioning their permanent account numbers, addresses, affidavits duly attested and evidence of having filed their tax returns with cash summary which confirmed the transactions of the assessee, both with regard to the advance amount paid by each of the related concerns which was subsequently adjusted against the sales made to these four parties and on account of the deposit of cash by each one of them on various dates towards the housing loan of the assessee Such evidence had not been doubted by the Assessing Officer. Therefore, the entries relating to the related parties in effect stood accepted. Held, that the three Hindu undivided families who had independent identities and were being assessed and carrying on business, had out of their independent sources made the cash deposits in the housing loan and they had furnished the necessary proof in respect of the amount deposited in the housing loan accounts of the assessee and, thus, the source of the source also stood justified. Merely because the parties

were not co-borrowers, the addition made by the Assessing Officer and confirmed by the National Faceless Appeal Centre was not justified. (AY. 2017-18)
Arun Garg v. ITO (2022) 98 ITR 508 (Chd) (Trib)

S. 68: Cash credits – Cash deposit in bank account- Telescoping -Peak credit- Failure to give explanation- Reassessment was affirmed -On merit the Assessing Officer was directed to work out peak credit and restrict the addition to extent of peak credits . [S. 147 , 148
Held, that in the absence of any material placed before the Assessing Officer explaining the source of cash deposits in savings bank account, the Assessing Officer was justified in treating the cash deposited in savings bank account had reassessment was affirmed .On merit the Assessing Officer was directed to work out peak credit and restrict the addition to extent of peak credits . (AY. 2011-12).
Navdeep Sood v ITO (2022)98 ITR 1 (SMC) (Amritsar) (Trib)

S. 68:Cash credits - Unexplained investments – Limited scrutiny assessment-Telescoping – Peak - Cash deposits in bank greater than turnover- Scrutiny restricted to verify deposits- Jurisdiction not exceeded- Assessee failing to substantiate with documentary evidence- Cash deposit treated as unexplained-Bank entries showing deposits and withdrawals- Assessing Officer directed to give benefit of telescoping. [S. 69]
Held, that the objection of the assessee regarding the Assessing Officer having exceeded his jurisdiction was misplaced as the assessee was required to explain the source of the cash deposits in the bank account. The Assessing Officer had restricted the scrutiny to verifying the cash deposits in the bank account. Hence, the objection of the assessee that the Assessing Officer exceeded the jurisdiction was ill-founded and rejected.Therefore, the cash deposits were to be treated as unexplained. From the bank statement furnished by the assessee for the period from April 1, 2014 to March 31, 2015, there were deposits and withdrawals from the bank account of the assessee. The authorities ought to have given a clear finding regarding withdrawals made by the assessee during the year under consideration. The addition of the entire deposits as unexplained was not justified. The Assessing Officer is directed to give benefit of telescoping, and if the benefit of telescoping was allowed the entire addition would not survive. The Assessing Officer was directed to delete the addition. (AY.2015-16).

Sanjeet Kanwar (Smt.) v. ITO (2022)98 ITR 12 (Amritsar) (Trib)

S. 68 : Cash credits - Gift from Mother-In-Law — Identity of donor established-Addition is held to be not valid .
Held that the assesssee has established the identity and capacity of the creditor or donor and the genuineness of the transaction. Addition is held to be not justified . (AY. 2016-17)
Aarthi Rathi (Ms.) v .ITO(IT) (2022) 98 ITR 16 (SN)(Hyd) (Trib)

S. 68 : Cash credits - Share application money —Net worth of lending investor is sufficient to explain its creditworthiness — Addition is not sustainable .
Held that the assessee has proved the identity credit worthiness and genuineness of the share application. Money . The assessee discharged the burden. The addition confirmed by the CIT(A) was deleted . *(* AY. 2012-13)
Combined Merchants P. Ltd. v. ITO (2022) 98 ITR 26 (SN)(Kok) (Trib)

S. 68 : Cash credits — Firm -Partner – Cash reflected in the ledger account of the firm - Deletion of addition is justified .

Held that the cash withdrawal was reflected in the ledger account of the partner . Deletion of addition was held to be proper . (AY. 2012-13)

Dy. CIT v .Arun Singhania (2022) 98 ITR 12 (SN)(Raipur) (Trib)

S. 68 : Cash credits - Unexplained investment — Partner – Reconciliation was filed – Deletion of addition is justified .

Held that the Assessee has filed the reconciliation and also source of investment . Deletion of addition is affirmed (AY. 2016-17)

Dy. CIT v. R. Geetha (Smt.) (2022) 98 ITR 50 (SN)(Chennai) (Trib)

S. 68 : Cash credits - Investors declaring meagre income or not filing returns - Investments made through banking channels not sufficient — Additions was confirmed .

Held that there were deposits in the bank account of the matching amount either on the same day or one or two days prior to the transfer of the money to the assessee's account. Merely because the investments by the investors were made through banking channels, that could not be a ground to absolve the assessee from proving the three ingredients.(AY. 2011-12)

Nuland Infrastructure (P.) Ltd. v. ITO (2022) 98 ITR 28 (SN)(Hyd) (Trib)

S. 68 : Cash credits – Agricultural income – Failure to produce evidence – Agricultural income was estimated of Rs. 5 lakhs and balance addition of Rs. 48 lakhs was confirmed . [S. 10(1)]

Held that the onus is on assessee to prove genuineness of exempt income. The assessee has not filed any supporting documents . The Tribunal estimated agricultural income of Rs .5 lakhs and confirmed the addition of Rs 48 lakhs as income from undisclosed sources .

(AY. 2011-12)

Ranganath Salke v. Add. CIT (2022) 98 ITR 21 (SN)(Pune) (Trib)

S. 68 : Cash credits — Long-term capital gains —Penny stocks - — Price of little known shares increasing 56 times in 28 months — Denial of exemption is affirmed .[S. 10(38) 45 , 131]

Dismissing the appeal the Tribunal held that it was evident from the findings of the Commissioner (Appeals) that in view of information provided by the Investigation Wing and the recommendations of the Special Investigation Team on black money, the assessee was required to prove her claim to exemption. After considering her reply, the Commissioner (Appeals) held that the assessee had manipulated the sale of shares within a short span of time in collusion with brokers in order to earn tax-free exempt long-term capital gains on the sale of shares under section 10(38) of the Act. The assessee had also not placed on record any material to prove that the claim of exemption under section 10(38) was genuine. Further, the action of the assessee was pre-motivated and deliberate conduct done for converting unaccounted money under the guise of long-term share transactions and that too without paying requisite tax thereon. This clearly amounted to tax evasion. It was beyond preponderance of probabilities that the fantastic sale price of little known shares, i. e., M Ltd., without any economic or financial basis would increase from Rs. 5 to Rs. 282 per share, 56 times in a span of 28 months. There was no doubt that the capital gains were manipulated and bogus and done to claim exemption under section 10(38) of the Act. Order of CIT(A) is affirmed. Relied PCIT v. Swati Bajaj (2022) 446 ITR 56 (Cal)(HC) (AY. 2015-16)

Sarika A. Sanap v. ACIT (2022) 98 ITR 44 (SN)(Pune) (Trib)

S. 68: Cash credits — Unsecured loan - Voluntarily disclosing Rs. 22 crores before Settlement Commission - Amount laundered and re-introduced in garb of unsecured loan through bank account of creditor -Interest expenditure not allowable . [S. 37(1), 131, 132(4)]

Held that the Commissioner (Appeals) had rightly treated 10 per cent. of the amount credited in the books of account of the assessee as income of the assessee following the findings given by the Settlement Commission. The modus operandi of the assessee could not be treated differently than the modus operandi adopted by the members of the group. Accordingly, there was no reason to distinguish the case of assessee from the cases of other assessees of the group, where a considered finding of the Settlement Commission was already in place. The Tribunal also held that the interest paid with reference to the unsecured loan could not be allowed.(AY. 2011-12)

SCC Investments v. ITO (2022) 98 ITR 38 (SN)(Raipur) (Trib)

S. 68 : Cash credits – Share application money – Withdrawal from capital account of partner – Onus discharged – Addition was deleted .

Held that the investment was madeout of the withdrawal made out of the opening balance in its capital account with a firm as evident from the capital account and bank account of the said company, the onus cast upon the assessee-company for proving the nature and source of the share application money was discharged . Addition was deleted. (AY. 2015-16)

Chhattisgarh Metaliks & Alloys (P)Ltd. v. ITO (2022) 220 TTJ 99 / 219 DTR 18 (Raipur)(Trib)

S. 68 : Cash credits – Purchase and sale of shares of JMD Ltd – Addition was deleted – Long term capital gains - Reassessment was affirmed. [S. 10(38), 45 ,69C, 147 , 148]
Held that the assessee produced evidence to prove the genuineness o purchase and sale of shares of JMD Ltd, the AO was not justified in making of addition under S. 68 simply on the basis of general information received from the Investigation Wing, unsubstantiated claim of the AO that the assessee converted his unaccounted money by taking fictitious LTCG in pre-planned manner cannot be accepted de hors any cogent material on record. Reassessment proceeding is affirmed . (AY. 2011-12)

Kamlesh Gupta v. Dy. CIT (2022) 215 TTJ 154 (Mum)(Trib)

S. 68 : Cash credits - Share premium – Income from other sources -Confirmation was filed -Valuation report was filed -Discounted Cash Flow Method (DCF) – Additional evidence filed by the Revenue - Share holders have replied to notices sent under section 133(6) of the Act – Receipt cannot be taxes as Revenue receipts -additional evidence filed by the Revenue was not admitted -Genuineness and creditworthiness was proved - Addition was deleted . [S. 28(iv),56(1),133(6], 263 , ITATR. R. 29]

Allowing the appeal of the assessee , the Tribunal held that the assessee has filed the confirmation letters of the share holders . The shareholders have responded to the notice issued under section 133(6) of the Act . Genuineness and credit worthiness was proved . Addition was deleted . Additional evidences filed by the Revenue which mainly includes the CBI charge sheets statements recorded before CBI under S. 161 and 164 CrPC before the Magistrate correspondences between the investor companies and the State Government documents procured from various State Government Authorities, statements recorded by the AO during the penalty proceedings. documents containing allotment of land, etc are not relevant for deciding the issues arising in the appeal addition of share premium under S. 56 and share capital and share premium under S. 68 because the entire details relating to the facts are available in the orders of the lower authorities i. e the assessment order and the order of the CIT(A) and hence the additional evidences are not admitted. (AY.2008 -09)
Jagati Publications Ltd. v. ACIT (2022) 215 TTJ 818 / 210 DTR 137 (Hyd)(Trib)
Editorial: Special Bench constituted was quashed Jagati Publications Ltd. v. President ITAT (2015) 377 ITR 31/ 279 CTR 271/ 124 DTR 131 (Bom)(HC) . SLP of Revenue is pending and No stay of proceedings. (Diary No. 42483 / 2015 filed on 18 th December , 2015 . Case No SLP (c) No. 005296 /2016 Registered on 19 th Feb , 2016 , SLP (C) No. 001974 /2016 , Registered on 29 th Jan. 2016 .

S. 68 : Cash credits -Accommodation entries – Praveen Kumar Jain group – Mohit International - Reassessment is valid-- Builder from Pune – Loan from Surat – Admission by accountant – Alleged accommodation entries – Addition is justified – Claim for cross examination was not made before the Assessing Officer - Absence of opportunity for such Cross examination cannot be a ground for quashing the assessment orders.[S. 131 , 147 , 148]

Held that the AO got tangible material in the shape of information from Director General of IT (Inv.). giving list of the beneficiaries of accommodation entries, which included the assessee's name with its address . Reassessment proceeding is held to be valid . Held that the Proprietor of Mohit International having given the statement that the concern though apparently engaged in the business of diamond trading was actually providing accommodation entries and that it was actually controlled by Praveen Kumar Jain and the said Parveen Kumar Jain having also admitted before the authorities that he was engaged in giving accommodation entries through companies under his control which were mere paper concerns and also provided the names and addresses of the beneficiaries of accommodation entries which included the name of the assessee. it is clear that the alleged loan received by the assessee from Mohit International was a mere accommodation entry. Addition was confirmed . Tribunal also held that the assessee was well aware about the case made out against it and it has placed on record the ledger extracts, bank statement, confirmation, PAN card, IT return and annual accounts of the lender in support of genuineness of the transaction, it cannot be said that the assessee was oblivious of the statements of the lender which were used against it and therefore, there was no violation of principles of natural justice on the ground that the incriminating statements of the lender and the entry operator were not supplied to the assessee, since the assessee did not make any request for allowing cross-

examination of the said persons, absence of opportunity for such Cross examination cannot be a ground for quashing the assessment orders. (AY.2007 -08)

Kasturi Rashi Development v. ITO (2022) 213 DTR 137/ 217 TTJ 586 (SMC) (Pune) (Trib)

S. 68 : Cash credits - Share capital – Credit worthiness was not proved – Addition was affirmed – Sundry creditors – Confirmation was filed – Remand report obtained- Deletion of addition is held to be justified .

Held that the share applicant's capital was negative and he owed Rs 77,25,30,551 to unsecured creditors and the bank statement of the share applicant shows that he received back exactly the same amounts on the same day whenever he made payments to the assessee-company, the creditworthiness of the share applicant and the genuineness of the transaction are not proved and therefore, the order of the AO was affirmed .Held thatCIT(A) having examined the details of creditors submitted by the assessee and the remand report of the AO and restricted the impugned addition to Rs 23,73,122 after giving well-reasoned findings to the effect that the assessee has established genuineness of sundry creditors and reconciled the amounts , the deletion of addition is held to be justified . (AY. 2009 -10)
ACIT v. Neesa Infrastructure Ltd. (2022) 215 TTJ 346 / 210 27(Ahd)(Trib)

S. 68 : Cash credits – Undisclosed source- Cash deposit in bank - Withdrawal from the Account of the wife – Source and purpose was explained – Addition was deleted [S. 69]

Held that the Assessee explained the cash deposit in his bank account on the basis of loans taken from two persons which has been confirmed by the lenders, sale of agricultural produce which is supported by the sale receipt and the amount withdrawn from the agricultural loan taken by his spouse from the State Government. Addition was deleted .(AY.2011 -12)

Ganesh Balkrishna Bende v. ITO (2022) 215 DTR 14 / 219 TTJ 1118 (SMC)(Pune)(Trib)

S. 68 : Cash credits - Share application money - Failure by share applicants to appear for inquiry in response to summons — Summons not served on some others – Addition is affirmed [S. 131]
Held that the assessee failed to produce or provide the complete addresses of the two alleged shareholders nor submit any evidence to show the source of funds in their hands ; during the course of assessment the assessee did not seek cross-examination of the alleged shareholders. The grounds raised by the Department for the year under consideration were identical to those raised in the assessment year 2013-14 except for the quantum of the amount. It was evident that in the preceding year the assessee had admitted the addition made by the Assessing Officer on identical grounds ; in view of the rule of consistency, the assessee was

not justified in raising the dispute without any valid reason. The findings of the Commissioner (Appeals) was upheld.(AY.2014-15)

Mahamedha Urban Co-Operative Bank Ltd. v. Dy. CIT (2022) 99 ITR 669 (Delhi) (Trib)

S. 68 : Cash credits - Share application money — Identity , creditworthiness of investors and genuineness of transactions established – Refund of share application money to one investor overlooked – Addition is not justified .[S. 133(6)]

Held that the assessee had placed on record copies of the returns of income with computation of income, bank details, etc., to substantiate its claim of having received share application money from the directors and their close relatives. The Assessing Officer had failed to place on record any material which would dislodge the authenticity of these documents. The assessee had, hence, discharged the primary onus that was cast upon it as regards proving the identity, creditworthiness and genuineness of having received share application money from the eight parties constituting the directors and their relatives. The adverse inferences so drawn by the Assessing Officer could not be sustained and were liable to be vacated.(AY. 2012-13)

ITO v .Sharda Shree Agriculture and Developers Pvt. Ltd. (2022) 99 ITR 143 (Raipur)(Trib)

S. 68 : Cash credits – Construction business- Cash received from seventeen persons – Booking cancelled cash refunded - Mere submission of Aadhaar and Permanent Account Number Card is not sufficient —Addition is justified – Amount received by cheque – Finishing work done in subsequent year – Matter remanded for verification .

Cash received and refunded Tribunal held that mere submission of Aadhaar and Permanent Account Number Card is not sufficient. Addition is justified . As regards the amount received by cheque , the Finishing work is done in subsequent year . Matter remanded for verification . *(* AY.2013-14)

Aakar Housing Developers Pvt. Ltd v. ACIT (2022)99 ITR 21 (SN) (Varanasi) (Trib)

S. 68 : Cash credits – Cash deposits – Cash received from customers - Demonetisation - Explained the source – Addition was deleted -Donation – Receipts produced – Matter remanded [S.80G]

Held that cash received from customers was deposited and the source was explained .Addition was deleted . Receipts for donations produced. Assessing Officer directed to verify receipts and grant deduction in accordance with Law .*(* AY.2017-18)

Jet Freight Logistics Ltd. v. CIT (Appeals) (NFAC) (2022)99 ITR 37 (SN)(Mum) (Trib)

S. 68 : Cash credits - Loans not taken during the year -Not taxable as cash credit .

Held that the Commissioner (Appeals) had given finding of fact that the unsecured loans were not taken during the financial year but in earlier financial years and disclosed in the relevant balance-sheet as such. Order of CIT(A) is affirmed . (AY.2014-15)

Dy. CIT v. Laxmipathi Balaji Sugar and Distilleries P. Ltd. (2022)100 ITR 58 (SN)(Delhi) (Trib)

S. 68: Cash credits — Share application moneys — Common directors - Detailed particulars of investors, their addresses, Permanent Account Numbers and amounts invested- Deletion of addition is justified .

Dismissing the appeal of the Revenue the Tribunal held that a remand report was furnished by the Assessing Officer during appellate proceedings before the Commissioner (Appeals), who, after looking into all the evidence and documents stated that all the evidence was before the Assessing Officer in the original assessment proceedings and did not require any further investigation into the matter. After considering all the evidence on record and the capacity of the investors who had sufficient own sources, the Commissioner (Appeals) deleted the addition. Order of CIT (A) is affirmed . (AY.2012-13)

Dy. CIT v. Shree Parasnath Re-Rolling Mills Ltd. (2022)100 ITR 51 (SN) (Kol.) (Trib)

S. 68 : Cash credits - Sale of Pharmaceutical products — Demonetisation — Cash deposits – Books of account not rejected – Sales not doubted – Addition is held to be not valid .

Held that from a plain reading of the Notification No. S.O. 3416 (E) , dated November 9 , 2016 , there was no specific mention of a requirement that doctors' prescriptions and identity of the persons purchasing medicines had to be kept in record to substantiate the cash sales during demonetisation period. Further, the Assessing Officer did not reject the books of account of the assessee and had not brought anything contrary on record to show that cash sales were not the source for the cash deposited during demonetisation period. Addition is not valid . (AY.2017-18)

ITO v. Manasa Medicals (2022)100 ITR 5 (SN)(Bang) (Trib)

S. 68: Cash credits –Money deposited in assessee's bank account- Explanation was furnished – Addition was not justified .

The Tribunal held that the assessee had discharged her onus of explaining the source of deposits in her account. Further, the Department wrongly rejected the explanation as not tenable when rightfully the onus had shifted to it to inquire further into the matter, having been given all relevant details of the persons allegedly operating the assessee's bank account, including their names, addresses, and permanent account number details. Thus, additions made not sustainable.(AY. 2015 -16)

Anandiben Jayantilal Shah v. ITO (2022) 97 ITR 55 (SN) (Ahd) (Trib)

S. 68: Cash credits – Unsecured loans- Non banking finance company- Genuineness and creditworthiness of lender proved – Deletion of addition is held to be justified .

The Tribunal held that the assessee has proved the genuineness and creditworthiness of lender proved . Deletion of addition is held to be justified . (AY. 2015-16)
ACIT v. SMB Securities Ltd. (2022) 97 ITR 67 (SN) (Delhi)(Trib)

S. 68: Cash credits –Complex transaction- Matter remanded for fresh consideration.
The Tribunal held that the assessee ought to have proved with evidence that it was not its money but had failed to do so. Considering the complex nature of transactions, the matter was to be remanded for fresh consideration by the Assessing Officer with liberty to the assessee to prove its case by producing sufficient material to the satisfaction of the Assessing Officer. (AY. 2012-13)
Sekani Industries Pvt. Ltd. v. Dy.CIT (2022) 97 ITR 39 (SN) (Ahd) (Trib)

S. 68 : Cash credits - Share premium- Monies received in earlier years – Opeing balance addition cannot be made- Share premium from founder promoter- Discharged burden of proving identity, genuineness and creditworthiness- Celebrity endorser- Isuue of shres at premium - Addition is not justified – Foreign investors -Foreign inward remittance certificates, in support of foreign investment received in accordance with RBI regulations, revenue ought not to have rejected primary evidences furnished- Matter remanded -

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Heeld that where opening balance of share premium represented monies received in earlier years and not in relevant assessment year 2018-19, section 68 would have no application in relation thereto addition was deleted . Assessee received share premium from founder promoter and had discharged its burden of proving his identity, genuineness and creditworthiness.The assessee had engaged a celebrity endorser, for which her consideration was fixed and instead of making payment, assessee had allotted equity shares to her at a premium, section 68 would not have any application . In respect of 'F', Assessing Officer/NFAC was to be directed to confine their inquiries only to genuineness of arrangement by enquiring as to whether agreed consideration had indeed been subjected to GST and TDS, as claimed by assessee; and also manner in which consideration has been accounted by assessee and shareholder in their respective books.If arrangement was found to be in accordance to law, then no addition shall be made on this count . Additions made on share premium credited against shares was not justified. Tribunal also held that the Revenue ought not to have simply pushed entire burden on to assessee to provide details and documents of foreign shareholders, particularly when CBDT empowered them to make independent enquiries from them . Right course of action for revenue was to make independent enquiries from these investors through appropriate channel. Revenue not having made independent enquiries, addition of share premium received from foreign investors was to be sent back to file of Assessing Officer/NFAC for de-novo assessment in respect of credit in assessee's book, in a fair and reasonable manner and in accordance to law. (AY. 2018-19)

Raw Pressery (P) Ltd. (2022) 220 TTJ 26 / 143 taxmann.com 158 (Mum)(Trib)

S. 68 : Cash credits – Purchase of shares by paying cash –Penny stock – Accomaodaatoon entries - Shares held in brokers pool account for 17 months – Shares

transferred to DEMAT account few days before the sale - Sale is held to be notgenuine – Addition is confirned- Expenditure is not allowable as deduction . [S. 10(38), 37(1), 45]

During relevant year the assessee sold said shares resulting in substantial amount of LTCG in a short span and same was claimed as exempt . Assessing Officer treated said capital gains as bogus receipts under section 68 on ground that assessee made unrealistic non-taxable capital gains on a very small investment that too in a short period of just 17 months by indulging in transactions of penny stocks . Tribunal held that the Assessee purchased shares in cash and not through banking channels and were held in pool account of broker for 17 months . On perusal of assessee's Demat account it was observed that shares were credited in said account after a period of 17 months just before date of sale. Accordingly the transactions couldnot be said to be genuine and Assessing Officer was justified in treating LTCG as bogus receipts under section 68 of the Act . Since transactions related to sale of shares couldnot be said to be genuine, Assessing Officer was justified in disallowing expenditure incurred in paying commission by holding that same was with respect to arranging bogus LTCG (AY. 2014 -15)

Abhishek Gupta v. ITO (2022) 220 TTJ 328 / (2023) 147 taxmann.com 21 (Indore)(Trib)

S. 68 : Cash credits – Gross profit – Turmeric trading – Purchase and sale – Addition is not justified .

Held thatthe transactions of assessee concerning purchase and sale of turmeric were conducted through 'B' in same way in which he did with more than 100 traders and genuineness of all of which had been accepted by department . There was no logic in making impugned additions in hands of assessee which were just off shoot of such a trading activity . (AY. 2010-11)

Sunil Kanhaiyalal Gidwani v. ACIT (2022) 216 TTJ 54 (UO) / 140 taxmann.com 21 (Pune)(Trib)

S.68: Cash credits - Share capital — Share premium — Parties Responding to enquiries made under Section 133(6) - Share capital and share premium is capital receipt — Cannot be taxed as income .

The Tribunal held that theidentity of parties had been established, their Permanent Account Numbers provided and nothing Adverse Pointed Out By Assessing Officer Or Commissioner (Appeals). The amendment to section 68 by the Finance Act, 2012 with effect from April 1, 2013, placed a heavy onus on the assessee, where the sum credited consisted of the share capital, share application money and share premium. The amendment could not be said to be retrospective in nature and had to be prospective, i. e., from assessment year 2013-14. the issue of share capital and share premium were on capital account and could not be considered income of the assessee. (AY.2012-13)

Greensaphire Infratech Pvt. Ltd. v . ITO (2022)95 ITR 464 219 TTJ 41 (UO) / 95 ITR 464 / 140 taxmann.com 308 (Amritsar)(Trib)

S. 68 : Cash credits - Unsecured loan – Repaid within short time – TDS deducted - Addition was deleted .

Held that when unsecured loan had been repaid within a short span of time for which assessee had paid interest and deducted tax thereon, Assessing Officer was not justified in making addition. (AY. 2007-08)

Rajhans Construction (P)Ltd. v. ACIT (2022) 216 TTJ 59 (UO) / 140 taxmann.com 370 (Surat)((Trib)

S. 68: Cash credits -Share application money — Amount credited in Bank account and credit shown in books of account in earlier year- Shares allotted in following year — Addition cannot be made in year in which shares were allotted.

Tribunal held that an addition under section 68 of the Act cannot be divorced from the year in which it is credited in the books of account of the assessee. Where the assessee had received share application money in the earlier year and, only shares were allotted to the applicant during the year under consideration, the provisions of section 68 of the Act could not be invoked to make an addition in the hands of the assessee during the subsequent year, i.e., the year in which shares were allotted. Therefore, there was no justification for the Assessing Officer to have made an addition thereof as an unexplained cash credit under section 68 of the Act during the year under consideration, i.e., AY 2012-13. Followed CIT v. Usha Stud Agricultural Farms Ltd. (2008) 301 ITR 384 (Delhi) (HC) . (AY. 2012-13)

Vision Mines and Minerals Pvt. Ltd. v. ITO (2022) 96 ITR 51(SN) (Raipur) (Trib)

S. 68: Cash credits - Income from undisclosed sources —Agricultural income — Additional evidence filed - Matter remanded . [S. 254(1)]

Tribunal held that the assessee had filed the additional evidence with respect to the addition of Rs. 26,59,255, and consideration thereof by the Assessing Officer was essential. Accordingly, the additional evidence filed by the assessee was to be admitted, and the issue was remitted to the Assessing Officer for fresh adjudication. (AY. 2008-09)

Vasantkumar Hiralal Patel v .ITO (2022)96 ITR 23 (Trib) (SN) (Ahd) (Trib)

S. 68: Cash credits - Deposits in bank accounts - Matter remanded for verification .

The Tribunal held that the genuineness of the transaction could not be ascertained unless a detailed inquiry was carried out by the Assessing Officer. The Assessing Officer may direct the assessee to produce the relevant information and persons who paid cash and treatment of this sum in the books of WF to substantiate the veracity of the agreement. (AY. 2013-14)

Amit Lalit Kapoor v. ITO (2022)96 ITR 65 (SN)(Mum) (Trib)

S. 68: Cash credits - Unsecured loans — Not providing supporting documents – Peak addition is held to be justified .

The Tribunal held that the assessee had not provided the new address of nor filed documentary evidence in support of identity, creditworthiness or genuineness of the transaction in respect of loans received . The Commissioner (Appeals) on perusal of the ledger account in the books of the assessee had treated the peak of all credits after adjusting the money returned . Order of CIT(A) was affirmed . (AY. 2012-13)

M. D. Noorudin Zariwala v. CIT(Appeals) (2022) 96 ITR 43 (SN) (Mum) (Trib)

S. 68: Cash credits - Share application money- Additional evidence produced before the Appellate Tribunal - Matter remanded .[S. 41(1), 254(1)]

The Tribunal held that the assessee had filed complete ledger copies of share applicants and other details, including confirmations. The additional evidence filed by the assessee would go to the root of the matter and help in adjudicating the issue. Hence, keeping in mind the principles of natural justice, the evidence was to be admitted, and the matter remanded to the file of the Assessing Officer for fresh adjudication. The matter was to go back to the Assessing Officer for fresh adjudication, as argued by the parties. (AY. 2012-13, 2014-15)

Talent Engineering (Coimbatore) Pvt. Ltd. v. ACIT (2022) 96 ITR 11 (SN) (Chennai) (Trrib)

S. 68: Cash credits – Cash deposits in bank account —Cash deposited from earlier withdrawals – Peak addition – Order of CIT(A) is affirmed .

The Tribunal held that Commissioner (Appeals) held that the cash deposits in the bank account were regular deposits and withdrawals in the bank account and that it would be unreasonable to add the entire amount as these proceeds emanated from the business of the assessee which was on-going. The Commissioner (Appeals) observed that the assessee had an opening balance of and considered the peak credit of this account as undisclosed income of the assessee and worked out the peak credit . Order of Tribunal affirmed . AY. 2009-10)

ITO v. Raman Kapoor (2022) 96 ITR 59 (SN)(Dehradun) (Trib)

S. 68: Cash credits - Acting as agent facilitating purchase of land from Farmers — Addition cannot be made as undisclosed income .

The Tribunal held that the assessee was acting as agent facilitating purchase of land from Farmers hence addition cannot be made as undisclosed income .(AY. 2009-10)

ITO v . Raman Kapoor (2022) 96 ITR 59 (SN) (Dehradun) (Trib)

S.68: Cash credits - Unsecured Loans -Repayment of loan established- Credit entries cannot be looked into in isolation ignoring debit entries.

The Tribunal held that the double entries appearing in the bank statements for repayment of the loan which were cancelled and reflected as deposits in the bank could be verified by the Revenue from the necessary details of real-time gross settlement application to the bank and the bank statements. If no such verification had been carried out by the authorities, then it will be assumed that the assessee had received a sum in one entry lakhs from the party and not the sum of both the entries as alleged by the Revenue. The onus shifted upon the Revenue to disprove the contention of the assessee based on the documentary evidence. Though the transactions of the loan received by the assessee were not free from doubt, once repayment of the loan had been established based on the documentary evidence; the credit entries could not be looked into in isolation ignoring the debit entries. (AY.2012-13)

Ras Concepts Pvt. Ltd. v. ITO (2022)95 ITR 46 (Ahd)(Trib)

S. 68 : Cash credits – Share capital – Share premium – Filed documentary evidences – Parties replied in response to notice u/s 133(6)- Deletion of addition was affirmed – Survey – Calculation mistakes while valuing the stock in trade- Stock reconciled – Addition was deleted [S. 133(6), 133A]

Held that the Assessee has filed all the documents/evidences relating to these investors in the form of names, addresses, ITRs, PANs and confirmation etc. before the AO which were duly matching with the documents filed by these investors before the AO in response to notices issued to these parties by the AO u/s 133(6). Order of CIT(A) has dealt with each and every aspect of the issue in great depth and thus passed a very speaking and reasoned order while deleting the addition. Appeal of revenue was dismissed . As regards the addition on account of stock in trade , the Tribunal held thatthere were several infirmities/mistakes committed by the survey team while doing stock taking physically. Tribunal observed that from the perusal of reconciliation statement, it is apparent that the assessee has explained the stock differences minutely. It shows that the survey team even has omitted the stock to the extent of Rs. 36,80,834.34 whole the calculating excess stocks by committing various mistakes such as double accounting of stocks, wrong application of rate and various other reasons. None of the authorities below has pointed out as to how the stock reconciled by the assessee is not correct. Difference in stock inventory is only to the tune of Rs. 3,81,063.09/-. Appeal of the assessee was partly allowed .(AY. 2015 -16)
Plasto Electronics P. Ltd v. Dy.CIT (2022) 95 ITR 93 (SN) (Kol)(Trib)

S. 68 : Cash credits - Confirmations not produced – Regular suppliers -Running accounts – Addition is not justified .

Held that the two parties in question were regular suppliers of the assessee and had a running account in the books of account of the assessee. The Assessing Officer had not drawn any adverse inference in so far as the transactions with these two parties were concerned. The addition had been made on account of closing balance standing at the end of the financial year. When the transaction throughout the year had not been doubted by the Assessing

Officer there was no reason why the closing balance was added. Order of CIT(A) is affirmed . (AY.2011-12)

ACIT v. D. D. Resorts Pvt. Ltd. (2022)95 ITR 1 (SN) (Delhi) (Trib)

S. 68 : Cash credits - Share premium and application money —Confirmations filed – Addition is not justified [S. 133(6)]

Held, that the assessee had returned the unsecured loans outstanding to various parties who happened to be directors of the assessee-company or their close relatives and thereafter the money so repaid was brought back in the form of share capital and share premium. The assessee had filed all the documents and evidence relating to these investors in the form of names, addresses, Income-tax returns, permanent account numbers and confirmations before the Assessing Officer which matched the documents filed by these investors before the Assessing Officer in response to notices under section 133(6) of the Act. The order of Commissioner (Appeals) had dealt with each and every aspect of the issue in great depth and passed a speaking and reasoned order while deleting the addition. Deletion of addition is not justified . .(AY.2015-16)

Dy. CIT v. Plasto Electronics Pvt. Ltd. (2022)95 ITR 93 (SN)(Kol) (Trib)

S. 68 : Cash credits - Shares at premium —Identity ,genuineness and creditworthiness established – Tangible fixed assets to substantiate premium – Deletion of addition is valid .

Held that the assesssee established identity, genuineness and creditworthiness or financial strength of the subscriber. The assessee had tangible fixed assets to substantiate and support and receipt of premium. Deletion of addition is held to be justified . (AY.2012-13)

Dy. CIT v. Sarvpriya Properties Pvt. Ltd. (2022) 95 ITR 23 (SN)(Delhi) (Trib)

S. 68: Cash credits — Exchange of demand drafts for cash to customers from North India to be used for local purchases —Banking facilities not available — Income offered at 8 Per Cent. profit treating value of demand drafts as sales – Order of CIT(A) is affirmed .

Held thatthe assessee did not entertain encashment of open demand drafts in its books from regular buyers and that buyers from North India approach the assessee with open demand drafts as they could not carry huge cash for their purchase of areca in the local market. In the assessment year 2008-09 core banking facilities were not available. The pattern of deposit of demand draft and withdrawal of cash immediately lent credence to the plea of the assessee. The assessee would have been beneficiary of only commission but had accepted eight per cent. profit treating the value of demand drafts as sales. The approach adopted by the Commissioner (Appeals) in the given facts and circumstances of the case was proper and called for no interference. (AY.2008-09)

ITO v. H. Omkarappa HUF (2022)95 ITR 26 (SN)(Bang) (Trib)

S. 68: Cash credits — Unsecured Loan — Additional evidence – Matter remanded [R.46A , ITATR. 29]

That in respect of the loan taken of Rs. 1 crore from D the Assessing Officer did not find the documents filed by the assessee satisfactory so as to establish the genuineness and creditworthiness of D. Before the Commissioner (Appeals), the assessee filed various documents to establish the genuineness of the transaction, but the Commissioner (Appeals) refused to admit them despite calling for the remand report. This matter was to be restored back to the Assessing Officer, with directions to examine all the evidence filed by the assessee in the form of additional evidence, to carry out necessary inquiries from D and also summon the directors or the principal officer of D to explain the source and genuineness of the transaction, to confront all the information and material gathered and communicated by the Investigation Wing to the assessee. The assessee was directed to co-operate in such enquiry. The disallowance of interest was also set aside as it was consequential to the aforesaid ground. .(AY.2011-12)

Young Indian v. ACIT (E) (2022)95 ITR 33(SN) / 218 TTJ 1 (Delhi)(Trib)

S. 68: Cash credits — Deposit of cash in bank - Sufficient cash balance on date of deposit of cash in bank- Deletion of addition is justified . [S. 153A]

Held that the assessee had sufficient cash balances in the books of account, which had not been rejected by the authorities and also on the date of deposit of the cash in the bank, there was sufficient cash balance available. Therefore the explanation of the assessee on this issue was to be accepted. Accordingly, the order of the Commissioner (Appeals) deleting the addition was confirmed.(AY.2017-18)

Ajaz Farooqi v. Dy. CIT(2022)95 ITR 188 (Hyd) (Trib)

S. 68 : Cash credits - Trade advance – Outstanding for more than three years – Classified as unsecured loan – Confirmation/ledger extract from creditor filed – Creditor was active company as per MCA website – Unsecured loan offered to tax u/s. 41(1) in subsequent year – Same loan cannot be treated as income for impugned year .[S. 41(1)]

The Tribunal held that since the assessee having filed confirmation from the creditor, ledger extract and also the data of the creditor company is available on the website of Ministry of Corporate Affairs which shows that the said company was in active status, AO could not make the addition under s. 68. The impugned addition is not sustainable also for the reason that the said unsecured loan has been treated as cessation of liability and offered to tax under S. 41(1) in the subsequent assessment year. (AY.2014-15).

Popular Foundations (P) Ltd. v. ACIT (2022) 209 DTR 18 / 215 TTJ 260(Chennai)(Trib)

S. 68 : Cash credits - Unsecured Loan –Sister concern – Addition was not valid .

It was the finding of the Tribunal that during the year under consideration, assessee and its sister concerns received unsecured loans form the same entity via banking channels. All the three sister concerns including assessee, returned the entire unsecured loans within the same financial year. Additions in the case of sister concerns of the assessee were deleted by the CIT(A). However, in the case of assessee addition was upheld. Further the proprietor of lender had explained the source of credit, before lending money to the assessee and its sister concerns and assessee made payment of interest after deducting TDS. This fact has not been disputed either by the Revenue or the proprietor of lender during the assessments of the

assessee's sister concern. It was also noted that No disallowance of such payment of interest was made by the AO. The Tribunal, therefore, held that the AO is not justified in making addition u/s. 68.(AY. 2007 -08)

Rajhans Construction (P)Ltd. v. ACIT (2022) 216 TTJ 59 (UO) / 140 taxmann.com 370 (Surat)(Trib)

S. 68: Cash credits - Capital gains - long term capital gains – Penny stock – Documentary evidence furnished –Copies of contract notes , DEMAT account – Onus discharged – Addition was deleted – Exemption was allowed .[S. 10(38), 45]

Allowing the appeal of the assessee the Tribunal held that the assessee had demonstrated with the substantial evidence before the Assessing Officer that the actual purchase and sales took place , shares had distinctive numbers , the transactions were routed through the normal banking channels and the shares had been allotted to the assessee subsequently under an order of amalgamation / merger . The Tribunal also held that, when the Assessing Officer had received the report of the investigation wing he ought to have conducted an independent enquiry to examine and verify the involvement of the assessee in the alleged bogus long term capital gain rather than simply and blindly following the report and the statement to make a case against the assessee . Accordingly the addition was deleted . (AY. 2013 -14)

Jatinder Kumar Jain v.ITO (2022) 97 ITR 403 (Chd)(Trib)

S. 68: Cash credits - Capital gains - long term capital gains- Bogus long-term capital gains leads to tax evasion and is prohibited-Ex parte order Addition confirmed as cash credits [S. 10(38), 45]

The assessee declared bogus long-term capital gains on the sale of penny stocks where after purchase by the assessee of the penny stock the price of the penny stock was jacked/inflated by entry operators and finally purchased from the assessee by Exit providers everyone being handed in glove with the other. The Tribunal relied on the case of the Supreme Court in McDowell and concluded that bogus long-term capital gains is nothing but tax evasion where long-term capital gains otherwise taxable is claimed as exempt by adoption of illegal means. (AY. 2014-2015)

Dineshkumar R. Tulsyan (HUF) v. ITO (2022) 220 TTJ 1094(Pune)(Trib)
Sumanadevi D. Tulsyan (Smt) v. ITO (2022) 220 TTJ 1094(Pune)(Trib)

Editorial : Appeals pending for admission before Bombay High Court . Dineshkumar R. Tulsyan (HUF) v. ITO (Lodging No. ITAXAl/ 13980 /2023 dt . 23-5 -2023), Sumanadevi D. Tulsyan (Smt) v. ITO (Lodging No. ITAXAl/ 13974 /2023 dt . 23-5 -2023)

S.68: Cash credits - Share capital – Share premium -Burden discharged – Addition was deleted .[S. 10(38), 45]
For addition under section 68, the only requirement is to establish the identity, genuineness, and creditworthiness of the investors and not the value of share premium. Assessee filed

Form PAS-3 filed before ROC, Confirmation from the investor, Statements of bank account of the investor showing payments towards share application money. Share Application form duly filled by the investor. Copy of PAN card of the investor. A copy of the acknowledgement of the Income-tax return filed for AY 2015-16 by the investor along with the statement of affairs for the year ended 31st March 2015. For addition u/s 68, the only requirement is to establish the identity, genuineness and creditworthiness of the investors and not the value of share premium. Even otherwise, it was very clear that the issue price of shares was justified as per Rule 11UA. (AY . 2015-16)

ACIT v. Enrich Agro Food Products (P.) Ltd. (2022)217 TTJ 815/214 DTR 147/ 141 taxmann.com 309 (Delhi)(Trib.)

S.68: Cash credits- Unexplained income- Commission agent- Explanation provided by assessee and agent valid- Addition was deleted.

Where the assessee was carrying on business through a commission agent and the explanation offered by the agent about receipt of money from farmers and forwarding the same to the assessee after deducting commission was brushed aside by the Department, the same is not acceptable. Since the the Department has already accepted more than a 100 such transactions executed by the agent as genuine, no doubt can be cast upon this transaction. The addition was deleted. (AY. 2010-2011)

Sunil Kanhaiyalal Gidwani v. ACIT (2022) 216 TTJ 54 (UO) / 140 taxmann.com 21 (SMC) (Pune)(Trib)

S. 68 : Cash credits - Capital gains – Penny stock – Accommodation entries – Information from Investigation wing of Kolkata -Global securities Ltd – STT paid - Shares acquired through private placement mechanism – Shares sold through the registered broker of the stock exchange – Denial of exemption is not valid – Addition cannot be made as cash credit – Reassessment was quashed. [S. 10(38), 45 , 69C, 133A 147 , 148]

It was held that where the assessee had acquired securities through private placement mechanism and shares were sold in the stock market through registered stock brokers duly discharging the STT applicable, the said transaction cannot be said to be bogus. Where any scrip is alleged to be a penny stock wherefrom accommodation entries are said to be provided without providing any live link with the assessee and where only material is the investigation report of the revenue authorities and certain statements during the survey, it is not cogent material to make an addition. It was also observed that no apparent violations under the Company Law have been brought to the notice by the revenue authorities. The allegation that the price of share remained high for almost one year due to accommodation entries is based on surmises and conjectures, more particularly whenopen market transactions cannot be controlled by anyone. The addition was deleted. Reassessment also quashed . (AY. 2013 -14 , 2014 -15)

Muktaben Nishantbhai Patel (Smt) v. ITO (2022) 217 TTJ 895 / 214 DTR 209 (Surat)(Trib)

Nishant Kantilal Patel v. ITO (2022) 217 TTJ 895 / 214 DTR 209 (Surat)(Trib)

S. 68: Cash credits -Cash deposit into bank account – Demonetization period – Source explained- Advance from customers – Sales bills raised -Recorded in the books of account -Books of account not rejected - Addition was deleted . [S. 145]

Assessee engaged in the business of trading in diamond filed its return of income for the year under consideration declaring a loss of Rs. 2.59 crores. The Assessing Officer noticed that the assessee has deposited a sum of Rs. 45 lakhs into its bank account during demonetization period. It was explained that the above said amount represented cash balance available in its books of account, which included advance received from the customers towards sale over the counter. In consequent to which AO held that the assessee has failed to prove cash deposits made by it during demonetization period and accordingly, treated the cash deposits of Rs. 45 lakhs as unexplained cash deposit and assessed the same as income of the assessee under section 68 of the Act. Further in appeal the Hon'ble CIT(A) also upheld the findings of the Ld. AO and confirmed the additions u/s 68 of the Act. Aggrieved the Assessee filed appeal before the Hon'ble Tribunal.

The Hon'ble Tribunal relying on *Lakshmi Rice Mills v. CIT(1974) 97 ITR 258 (Pat)(HC) and ACIT v. Hirapana Jewelers (2021) 189 ITD 608 (Visakha Patnam)(Trib)* held that it is seen that the advance amount collected from customers, the sales bill raised against them etc., have been duly recorded in the books of account. The impugned deposits have been made from cash balance available with books of account. Also the Assessing Officer has not rejected the books of account. Thus, when cash deposits have been made from the cash balance available in the books of account, there is no question of treating the said deposits as unexplained cash deposit (AY . 2017-18)

R.S. Diamonds v. ACIT (2022) 98 ITR 505 /(2023) 198 ITD 344 (SMC) ((Mum) (Trib)

S. 68 : Cash credits - Share capital – Share premium – Deletion of addition is affirmed .

Held that the Revenue authorities have not found any adverse material during the course of search or post search enquiries indicating that the assessee has received any bogus share capital or share premium. The order of CIT (A) deleting the addition was affirmed . (AY. 2009-10)

Dy. CIT v. BDR Builders & Developers (P) Ltd. (2022) 220 TTJ 921 / (2023) 221 DTR 394 (Delhi)(Trib)

S. 68 : Cash credits-Cash deposit-Matter remanded to the Assessing Officer to decide fresh.

Assessing Officer made an addition on account of cash deposited in the Bank as cash credits. Tribunal held that since the assessee had now requested for another opportunity to be given to it to substantiate genuineness of source of cash deposit, the matter is remanded to the file of the Assessing Officer. AY. 2011-12)

Vardhman Shipping (P.) Ltd. v.ITO (2022) 197 ITD 250/ 98 ITR 3 (SN) (Ahd) (Trib.)

S. 68 : Cash credits-Gift of jewellery from grand mother-Gift received in kind-No cash or cheque-Addition cannot be made as cash credits-Affidavit of grand mother was filed –No occasion for gift to be proved-Exempt from the provisions of section 56(2)(vii) of the Act. [S. 56 (2)(vii)]

Assessee received jewellery from her grandmother which was credited as gift in capital account by assessee. Assessing Officer treated same as unexplained cash credit on ground

that no occasion or reason was mentioned for grant of gift. Held that the assessee has furnished gift deed from grandmother together with an affidavit in non-judicial stamp paper confirming fact of gift. Affidavit stated that grandmother had given said gift out of her streedhan. Since gift was received in kind and no cash or cheque was received by assessee as gift, provisions of section 68 is not applicable hence addition is deleted.Tribunal also held that since grandmother/donor gave jewellery as gift to assessee out of natural love and affection, no occasion was required to be proved and same would be exempt from tax in terms of section 56(2)(vii) (AY. 2015-16)
Jyoti R. Raut. (Mrs.) v. DCIT (2022) 197 ITD 552 (Mum) (Trib.)

S. 68 : Cash credits-Limited scrutiny-Large investment in property-Wrong mention of the PAN-Addition for purchases as cash credits cannot be made.[S. 143(3)]

Assessee's case was selected under CASS for limited scrutiny for reason that assessee made a large investment in property as compared to his total income. Assessing Officer made additions with respect to said purchase on ground that assessee failed to file details regarding proof of investment and source of investment. Assessee claimed that land was purchased by company in which assessee was director/signing authority and instead of PAN of company his PAN was wrongly mentioned. It was noted from detailed submissions made by assessee, particularly, cash book of company, IP in which assessee was Director showing source of investment made for such purchase of land. Held that since it was established fact that land was purchased by company merely because assessee's PAN number was wrongly mentioned instead of company's PAN, purchase could not be said to be made by him when purchase had been shown in profit and loss account of company itself as well as part of closing stock of said company. Accordingly, the additions made by Assessing Officer was deleted. (AY.2014-15)
ITO v. Bhavin Mukeshbhai Patel. (2022) 197 ITD 751 (Ahd) (Trib.)

S. 68 : Cash credits-Cash deposited-Agricultural income-Addition is not valid [S. 148]

Assessee, Managing Director of MSC, had filed his return of income and assessment was completed. Cash deposited in the bank was assessed as cash credits. Order was affirmed by CIT(A). Held that since assessee had discharged his onus by disclosing source of alleged cash deposit, additions made by Assessing Officer and further confirmed by Commissioner (Appeals) could not be sustained. Addition is deleted. (AY. 2010-11)
P. Prabhu. v. ACIT (2022) 197 ITD 821 (Chennai) (Trib.)

S. 68 : Cash credits-Purchases-Shown as trade creditors-Confirmation was filed-Payments were made through banking channels-Addition is not valid.
Held that the assessee had filed confirmation of balances obtained from creditors, furnished purchase registers, ledger accounts, names and addresses of all creditors. Addition was held to be not valid. (AY. 2012-13)
ACIT v. Lenskart Solution (P.) Ltd. (2022) 196 ITD 297 (Delhi) (Trib.)

S. 68 : Cash credits-Share capital-Share premium-Shares allotment-Converted fully convertible debentures (FCDs) into equity shares on same price of FCDs-No credit entry during the year-Addition deleted

The assessee converted fully convertible debentures (FCDs) into equity shares at same price of FCDs and showed share capital and share premium. Assessing Officer made addition as

unexplained cash credit. CIT (A) held that no money was actually received or credited during year but only amount which was already received in past years on issuing FCDs was converted into equity shares. since there was no credit entry of cash made in relevant year and there was mere dressing of accounts, addition was deleted. Tribunal affirmed the order of Commissioner (Appeals) (AY. 2014-15)
DCIT v. NCR Business Park (P.) Ltd. (2022) 196 ITD 678 (Delhi) (Trib.)

S. 68 : Cash credits-Share application money-Bank statements, audited balance sheet, financial statements, copies of ITR etc.-Addition is not valid.
Dismissing the appeal of the Revenue, the Tribunal held that the Assessee had filed bank statements, audited financial statements, copies of ITR etc. of shareholders so as to prove their identities and creditworthiness and genuineness of transactions. Order of CIT(A) deleting the addition was affirmed. (AY. 2011-12)
DCIT v. Karmeshwar Exim (P.) Ltd. (2022) 195 ITD 211 (Surat) (Trib.)

S. 68 : Cash credits-NRI-Gift from brother-Addition was deleted-
Held that the assessee had discharged onus to prove the genuineness of cash deposited in his bank account by submitting various documents and there was nothing contrary brought on record. Addition was not valid.(AY. 2012-13)
Atul H. Patel. v. ITO (2022) 195 ITD 297 (Ahd) (Trib.)

S. 68 : Cash credits-Demonetization-Cash deposited-Cash sales-Demonization-Addition as undisclosed income was not justified-Construction of showroom-Difference in valuation was less than 10 percent-Addition was deleted [S. 69, 153A]

Held that when cash deposited post-demonization out of cash sales which was accepted by Sales tax /VAT Department and not doubted by the AO and sufficient stock was available to make cash sales, cash deposited cannot be added as undisclosed income. Held that when the difference between valuation shown by the assessee and estimated by DVO was less than 10 percent then the AO was not justified in substituting the valuation determined by DVO in respect of cost shown by the assessee. (ITA No. 310/ 311 (Chd) of 2021 dt. 25-3-2022) (AY.2017-18)

Charu Aggarwal (Smt.). Dy. CIT (2022) 96 ITR 66 (Trib) (Chd)(Trib)

Kalaneedhi Jewellers LLP v. Dy. CIT (2022)96 ITR 66 (Trib) (Chd)(Trib)

S. 68 : Cash credits-Demonetization-Cash deposits-Sale proceeds-Sale proceeds offered to tax as revenue receipt-Addition would lead to double taxation-Addition is deleted. [S. 44AB, 115BBE]

Asseesse is engaged in business of dealing in beedi, tea powder and pan masala. Assessing Officer made addition treating cash deposits as cash credits. CIT(A) affirmed the addition. On appeal, the Tribunal held that sale proceeds was shown as revenue receipts and offered to tax and if said receipts were to be taxed under section 68 again, same would result in double taxation, once as sales and again as unexplained cash credit, and thus, impugned addition made under section 68 were not sustainable and liable to be deleted. (AY. 2017-18)

Anantpur Kalpana. v. ITO (2022) 194 ITD 702 (Bang) (Trib.)

S. 68 : Cash credits-Share application-Entries were circulating in nature-Failed to establish creditworthiness or genuineness of transaction-Addition is held to be justified.

Held that the assessee failed to comply with requirement of forming satisfaction as to creditworthiness of share applicant or genuineness of transaction, Assessing Officer was justified in making additions under section 68 and concluding that assessee routed its own money in books of account through conduit of investor companies. (AY. 2013-14)
Anandtex International (P.) Ltd. v. ACIT (2022) 194 ITD 320 (Delhi) (Trib.)

S. 68 : Cash credits-Share capital-Transaction through account payee cheques, bank statements filed-Addition is not valid [S. 133(6)]
Dismissing the appeal of the Revenue, the Tribunal held that share application money was paid through account payee cheques and share applicants provided details of their bank statements when notice under section 133(6) were issued to them by Assessing Officer. The Assessing Officer could not find any cash deposits in share applicant's bank accounts prior to issue of cheques to assessee-company. Since all basic relevant documents were filed to prove identity, creditworthiness and genuineness of transactions entered into with share applicants, additions are not valid. (AY. 2012-13)
DCIT v. Gandhi Capital (P.) Ltd. (2022) 194 ITD 396/ 220 TTJ 680 (Surat) (Trib.)

S. 68 : Cash credits-Loan-Commission-Search and seizure-Bogus accommodation entries-Addition is held to be justified-Fictitious-Bogus entries-Rejection of books of account justified [S. 132, 145, 153C]

Pursuant to a search and seizure conducted upon various groups, there was sufficient incriminating material to prove that assessee was not doing actual business of trading of diamonds and only earned commission income on sales, import and loan entry and there being clear admissions of assessee about entire business affair carried out by him with his associates for providing bogus accommodation entry, additions of commission income on export as well as on unsecured loan was justified. Tribunal also held that once business of assessee as per its books was proved fictitious and bogus, action of Assessing Officer in rejecting books of account was justified (AY. 2008-09 to 2014-15)
Sanjay Kumar Choudhary (HUF) v. ACIT (2022) 194 ITD 92 (Surat) (Trib.)

S. 68: Cash credits-Foreign bank deposits-HSBC account-Non-Resident-Merely on the basis of 'base note' addition cannot be made in the hands of non-Resident-Deletion of addition is affirmed. [S. 5(2), 6, 147, 148]

The assessee is a non-resident since AY. 2001-02.The assessee is working as employee in Belgium and has no business communication in India or outside India and source of income are only those which are disclosed to the tax authorities. The assessment of assessee was reopened on the basis of 'base note' of the assessee in HSBC account being USD 67421, translated to Rs. 30,33.945 added as income deemed to accrue or arise in India for which the assessee has not offered any explanation about the source and nature thereof. On appeal, the CIT(A) deleted the addition following the judgement of the Tribunal in the case of Dy.CIT

v. Hemant Mansuklal Pandya (ITA Nos 4679& 4680/M/2016 dt. 18-10-2018 (2018) 100 taxmann.com 280/ 68 ITR 345 (Mum)(Trib). On appeal by the revenue, dismissing the appeal the Tribunal held that ' base note ' could have been used for income-tax in hands of the assessee only if he is resident in India. There is no deposit during the year. Accordingly the order of the CIT(A) is affirmed. The Cross objection of the assessee was dismissed as infructuous. (ITA No. 494/ Mum/2021 / ITA No 493/ Mum/ 2021 / Co No. 155/ Mum/ 2021 / CO No. 156 /Mum/ 2021 dt 31-10-2022) (AY. 2006-07, 2007-08)

DCIT v. Manish Vijay Mehta (Mum)(Trib) www.itatonline.org
DCIT v. Urvi Manish Mehta (Mum)(Trib) www.itatonline.org

S. 68: Cash credits-Share capital-Share premium-Special Bench-Shell company-Accommodation entries-Circumstances indicate that the investor company is a shell company-Matter referred to the consideration of the Honourable President for referring the matter to Special Bench.[S. 255(3)]

The AO assessed the share capital and share premium received from Kolkata based company as cash credits u/s 68 of the Act. On appeal, the CIT(A) deleted the addition. On appeal by the Revenue, the Tribunal held that the material facts were discernible from material on records. Since there was diversified approach adopted by co-ordinate benches with respect to factors in determining genuineness of a transaction, said matter was to be placed before a Special Bench to take appropriate call and to give requisite guidance to division benches (AY.2008-09 & 2010-11 to 2015-16)
DCIT.v. Lotus Logistics & Developers Ltd (2022) 195 ITD 241 / 216 TTJ 241/ 211 DTR 185 (Mum)(Trib.)

S. 68 : Cash credits-Non-furnishing of evidence and non-genuine business activity-Entire gross profits treated as undisclosed income-Addition is deleted as primary onus of proving the genuineness is discharged [S. 131]
The assessee is engaged in turmeric trading activity. During the assessment, the Ld. AO observed that the so-called Turmeric trading activity was not supported by any evidence, therefore, he treated the entire gross profit as unexplained cash credit u/s. 68. The assessee also carried out his business through agency and had received share of profits (net of commission). The AO opined that the amount received from such agent was nothing but the assessee's income u/s. 68, thereby making further addition. On appeal, the Hon'ble ITAT observed that in support of the transactions, the assessee furnished all the purchase and sale bills. Further, the modus operandi of business was also supported by the agent of the assessee by giving a statement u/s. 131. The agent also provided agency services to more than 100 other persons and no addition was made u/s. 68 in respect of such persons. The Hon'ble ITAT held that there was no reason for the Ld. AO to hold that the transaction of the assessee with agent was non-genuine when the agents' transactions with the other persons was held to be genuine. Further, it also observed that the Ld. AO repelled the statement given by the agent u/s. 131 without assigning any justifiable reason. Hence, the Hon'ble ITAT deleted the entire addition made u/s. 68.(AY. 2010-11)

Kailash Kanhaiyalal Gidwani v. ACIT (2022) 216 TTJ 54 (UO)(Pune)(Trib.)

S. 68 : Cash credits-Share Capital-Identity and creditworthiness established-Deletion of addition is held to be justified.-Additional evidence-AO has not raised any objection-Admission of additional evidence is held to be justified. [R. 46A]

Held that before CIT(A) the assessee submitted the complete details/documents, etc. such as confirmation, PAN, bank passbook and proof of furnishing of filing of return. Discharged the onus to establish the identity and creditworthiness of the subscribers to the new share as required u/s 68 of the Act. Addition deleted by the CIT (Appeals) has been upheld by the ITAT. Held that AO has not raised any objection. Admission of additional evidence is held to be justified(AY. 2010-11)

ACIT v. Jiji Industries Ltd. (2022) 64 CCH 0360/ 216 TTJ 858 / 212 DTR 81 (Indore)(Trib.)

S. 68 : Cash credits-Cash withdrawn earlier deposited-Denomination-Addition is held to be not valid.

The assessee deposited the cash withdrawn from the bank. The AO held that the withdrawal of cash of specific denomination did not match the deposit of notes of specific denomination hence added the cash deposit u/s 68 of the Act. On appeal, the CIT(A) affirmed the order of the AO. The Tribunal held that the cash deposited did not exceed the cash withdrawals. There was no evidence on record to suggest that the cash withdrawn from banks was utilised for a different purpose and cash deposits after a considerable time were made from a different source altogether. Addition was deleted. Relied on ACIT v. Baldev Raj (2008)) 27 CCH 915 (Delhi)(Trib), DCIT v. Ganga Singh(2014) 41 CCH 170 (Delhi)(Trib), Anand Autoride Ltd v. JCIT (2005) 24CCH 742(Ahd)(Trib) (ITA No. 7125 /Mum/ 2019 dt. 27-7-2021)

Shri Krishna Chmankar v.ACIT (2022) The Chamber's Journal-February-P. 182 (Mum) (Trib)

S. 68 : Cash credits-Cash deposit-Sale of agricultural land-Addition was deleted.

Held that cash deposited on sale of agricultural land which was referred in the agreement hence it cannot be assessed as unexplained cash deposits. (ITA No. 593/ Chny/2019 dt 18-5-2022)(AY. 2015-16)

V. Ngarajan v.ITO (2022) The Chamber's Journal-June-P. 81 (Chennai) (Trib)

S. 68 : Cash credits-NRI-Gifts from relatives-Cash deposited in bank-There is no prohibition for the NRI for accepting gifts from relatives-Addition was deleted [S. 131, 133(6)]

Held that there is no prohibition for the NRI for accepting gifts from relatives. Merely the difference in the time between the cash deposited in the bank vis-a-vis cash received as gift, addition cannot be made as cash credits.Before drawing adverse inference against the assessee Revenue should have cross verified with the donors by issuing notice under section 131 or 133(6) of the Act. Addition was deleted. (TS-348-ITAT-2022)(Ahd) (AY. 2012-13) dt. 29-4 2022)

Atul H Patel v.ITO (2022)195 ITD 297 (Ahd)(Trib)

S. 68 : Cash credits-Sale of shares-Purchase of shares accepted as genuine by the Assessing Officer-Addition as cash credits is not justified.

Held that the purchase of the shares or the source of payments, for purchase of these shares have not been doubted by the AO; the advances/sale proceeds against the sale of these shares were duly credited in the profit and loss account and profits therefrom offered in the income declared, and therefore these receipts do not constitute 'cash credits' within the meaning of section 68. The transactions involved with regard to the sale of shares were through banking channels and in spite of collating the bank accounts of various persons related to the source of payments, the AO has not brought on record any material to further his contention. (AY. 13-14)

ACIT v. Jotindra Steel & Tubes Ltd. (2022) 94 ITR 359 (Delhi) (Trib)

S. 68 : Cash credits-Bank deposits-Addition is sustained-Advance from customer-Addition is not justified.

Tribunal held that as regards cash deposits the assessee has made general submissions and could not substantiate the claim placing necessary supporting. Due to lack of necessary evidence, no merit is found in assessee's claim. As regards advance from customers is from a customer namely M/s. Trishakti Power P. Ltd. received by the assessee, as part of regular business transaction for the purpose of completing a contract. The addition is deleted. (AY. 2012-13, 2013-14,2014-15)

DCIT v. Bridge & Building Construction Co. (P.) Ltd (2022) 94 ITR 515 (Kol)(Trib)

S. 68 : Cash credits-Shares at premium-Documents filed –Low return of income by the subscribers-Burden discharged-Addition is not valid.

The Assessing Officer has not made any enquiry whatsoever, or depute an inspector or seek the help of the Investigation Wing to support the conclusion that it was a case falling under section 68. The Commissioner (Appeals) had confirmed the addition solely on the basis of low returned income of the subscribers. The assessee had filed all documents to prove its case prima facie and, thus, discharged the primary onus on it. It was for the Revenue to pick up the addresses, names, locations and carry out further investigations to prove the credibility or non-credibility of the parties, which was abysmally lacking. The order of the Commissioner (Appeals) had no iota of any tangible material. As nothing was shown to conclude that the income fell within the ambit of section 68, the action of the Commissioner (Appeals) could not be sustained.(AY. 2010-11)

Intellectual Securities Pvt. Ltd. v.Dy. CIT (2022) 94 ITR 409 /217 TTJ 56/ 213 DTR 111 (Delhi)(Trib)

S. 68 : Cash credits-Share application money-Addition was deleted on merits-Reassessment valid [S.68, 147, 148]

Held that the assessee had produced documentary evidence before the Assessing Officer to establish that it had received genuine share capital/premium from the investor company. The documentary evidence had not been doubted by the authorities. The assessee had proved the identity of the investor, its creditworthiness and genuineness of the transaction in the matter. Addition was set aside. Reassessment was upheld.(AY.2010-11)

Ancon Chemplast P. Ltd. v. ITO (2022)93 ITR 167 (Trib) (Delhi)(Trib)

S. 68 : Cash credits-Unsecured loans-Proved identity, creditworthiness and genuineness of transactions-Relying on statement of third parties without giving an opportunity of cross examinations, additions cannot be made [S. 131]

Held that the assessee has filed income-Tax acknowledgments, audited accounts, long-term investments and bank statements, Permanent Account Numbers and Registered addresses of creditor Companies. Duty of Income-Tax authorities to conduct further enquiry and an opportunity to cross-examine deponents whose statements relied on to draw adverse inference against assessee. Addition was deleted. *(*AY.2015-16)

ACIT v. Overtop Marketing Pvt. Ltd. (2022)93 ITR 132 (Kol) (Trib)

S.68: Cash credits-Accommodation entries-Entire deposit cannot be added as income of the assessee-Estimating the commission at 0.6 percent is held to be appropriate

Tribunal held that in view of the finding that the assessee was an accommodation entry provider and his real income was only from commission/brokerages, the estimate shall be reasonable having regard to the business conducted by the assessee. Inasmuch as the assessee accepted the commission at 0.6 per cent. by not preferring any appeal against the order of the Commissioner (Appeals), there was no reason to disturb the findings of the Commissioner (Appeals) in this matter to the effect that the commission at 0.6 per cent. was appropriate.(AY.2002-03)

ITO v. Rakesh Relan (2022)93 ITR 39 (SN)(Delhi) (Trib)

S. 68 : Cash credits-Cash deposit in bank-Past withdrawals-Household withdrawals explained-Addition is held to be not valid.

Held that the assessee had explained the source of cash deposits as being withdrawals made in the previous two years and cash in the hand at the beginning of the year, in support of which the assessee had submitted the cash book and cash-flow statement for the previous two financial years. The statements sufficiently explained not only the source of deposits by way of salary and other retirement benefits, which had been duly declared, but also withdrawals towards household expenses, which were partly funded by him and partly by his wife. Therefore, as availability of cash in hand at the beginning of the year was also sufficiently explained. Addition is directed to be deleted. (AY.2014-15)

Sunil Mathur v.ITO (2022)93 ITR 86 (Jaipur) (Trib)

S.68: Cash credits-Unexplained expenditure-Capital gains-Penny stocks-Accommodation entries-Purchase of shares at premium in off market Transaction-Sale after three years-Report of Investigation Wing-Information never provided nor cross-examination of Individuals allowed-Additions is not valid.[S. 10(38) 45, 69]

The assessee purchased 20000 equity shares in a Premier Capital Services Ltd in an off-market transaction through preferential allotment. There was a one-year lock in period on September 4, 2012 and lock in release on September 4, 2013. The payment for the purchase was made by cheque. The quantity of shares increased from 20,000 shares to 2,00,000 shares due to stock split as on March 21, 2014. The price per share was Rs. 75 inclusive of premium of Rs. 65. During the previous year relevant to the assessment year 2015-16 the assessee sold 2,00,000 equity shares for a gross consideration of Rs. 5,49,04,773 (at Rs. 211.00 to Rs. 273.60 per share) on the stock exchange and the consideration was received by cheque. The Assessing Officer held that the scrip in which the assessee traded was insignificant, bogus, without business fundamentals and required the assessee to prove the genuineness of the transaction.The Assessing Officer added the sale proceeds of Rs. 5,49,04,773 under section 68 of the Act and Rs. 16,47,143 under section 69 of the Act towards the commission paid to the entry provider to the taxable income of the assessee. The Commissioner (Appeals) sustained the addition made by the Assessing Officer. On appeal, the Tribunal held that no enquiry was carried out by the Assessing Officer or by the Commissioner (Appeals) who had merely relied on the report of the Investigation Wing and statements of certain individuals recorded during the course of search who had stated that they were engaged in providing accommodation entries for long-term capital gains or loss in various shares which were called penny stocks. However, this information was never provided to the assessee. Similarly, no cross-examination was allowed by the Assessing Officer to the assessee during the assessment proceedings. In other words, the Assessing Officer had merely relied on the investigation report and did not try to collect further evidence by conducting further investigation to prove that the assessee's own funds had changed hands. Under these circumstances, the Assessing Officer was to delete the addition made under sections 68 and 69 of the Act. Followed Amit Mafatlal Shah v. ACIT, ITA No 5793/(Mum/ 2019 dt 20-4. 2020) AY.2015-16)

Mukesh Bhoormal Jain v.ITO (2022) 93 ITR 26 (SN)(Mum) (Trib)

S. 68 : Cash credits-Share application money-Not furnished explanation about nature and source of credit-Addition is confirmed.

Assessing Officer made addition as cash credits in respect of share application money received by the assessee on the ground that the identity and creditworthiness of creditors and genuineness of transactions were not found to be established. CIT(A) deleted the addition. On appeal by the Tribunal held that parties in whose name such credit was recorded in books of assessee did not give any explanation about nature and source of such credit hence addition made by Assessing Officer under section 68 was restored. (AY. 2012-13)

ITO v. Parsoli Motor Works (P.) Ltd. (2022) 193 ITD 585 (Ahd) (Trib.)

S. 68 : Cash credits-Purchase of agricultural land-Investment transferred from personal books of account-Addition held to be not justified.

Assessee purchased an agricultural land. The Assessing Officer made addition as unexplained investment. Commissioner (Appeals) also confirmed addition on ground that assessee failed to discharge burden of proof by not establishing source of investment. On appeal, the Tribunal held that the assessee categorically explained that corresponding adjustment in respect of addition made to agricultural land was not routed through capital account but rather amount was transferred from books of account of business to personal books of account of assessee. Source of agricultural land purchased by assessee was duly explained addition was deleted. (AY. 2014-15)

Krishna Mohan Choursiya. v. ITO (2022) 192 ITD 214 (Indore) (Trib.)

S. 68 : Cash credits-Share capital-Share premium-Promoters had sufficient funds-Directed to file bank statements of subscribers and copy of returns filed.

Tribunal held that merely by showing that funds had been received in hands of assessee through banking channels, would not establish creditworthiness of such creditors. Matter remanded to the Assessing Officer and directed to file bank statements of creditors/subscribers and copy of returns filed by them to establish that promoters/share subscribers had sufficient funds to make payments to assessee towards share capital/share premium. (AY. 2013-14

India on Time Express (P.) Ltd. v. ACIT (2022) 192 ITD 366 (Bang) (Trib.)

S. 68 : Cash credits-Cash payment by purchaser-Sale of agricultural land-Correctness of Ikrarnama-Agreement to sell-Matter remanded.

Assessing Officer made an addition on ground that assessee deposited cash in his bank account. CIT(A) confirmed the addition on the ground that mere filing of affidavit is not sufficient. On appeal, the Tribunal held that authenticity of Ikrarnama in question, including signatures of parties needed to be forensically examined and witness to document would also needed to be examined to ascertain and verify whether signatures on Agreement to Sell 'Ikrarnama' which had been disowned by purchaser as a forgery. Matter remanded (AY. 2010-11)

Naresh Sharma. v.AO *(*2022) 192 ITD 379 (Chd) (Trib.)

S. 69 : Unexplained investments-Onus is on the assessee to explain the cash deposits and if no explanation is given, the amount can be assessed as assessee's income.[S. 68, 260A]

Assessing Officer made an addition of certain sums deposited in the assessee's bank account as unexplained cash credit under section 68 of the Act. CIT(A) held that the provisions of s. 68 of the Act were not applicable but confirmed the addition under s. 69 of the Act. High Court upheld the addition under section 69 of the Act and observed that the onus was on the assessee to explain the source of deposits satisfactorily which onus was not discharged in the present case. High Court further held that the power of CIT(A) is coterminous with that of the Assessing Officer and CIT(A) could modify the assessment order by making addition under the correct provision i.e. section 69 of the Act. (AY. 2009-10)

C.K. Ramakrishna v. ITO (2022) 212 DTR 74 / 325 CTR 560 (Karn)(HC)

S. 69 :Unexplained investments-Peak credit-Amount disclosed and offered in one assessment year-Revenue bifurcating in to two assessment years-Rate of tax is same in both assessment years-Appeal of Revenue dismissed as there is no loss to Revenue. [S. 132(4)]

Dismissing the appeal of the Revenue the Court held that the dispute has arisen only with respect to the relevant assessment year. However, the ITAT has held that said amount was declared at the behest of the Revenue and the calculation of the peak credit was also at the behest of the tax authorities. Tax rate in both the assessment years is same there is no loss to the revenue. Order of Tribunal affirmed. (ITA No. 3917 / Del/ 2017 & 6628 /Del/ 2017 dt 16-9-2022)(AY. 2006-07, 2007-08)

PCIT v. Shri Krishan Lal Madhok (2022) BCAJ-November-P. 56 (Delhi)(HC)

S. 69 :Unexplained investments-Recorded in the books of account-Deletion of addition is held to be valid.

Dismissing the appeal of the Revenue the Court held that the investment was financed by bank which was explained at stage of assessment and recorded in account books. Order of Tribunal affirmed. (AY. 2004-05 to 2010-11)

PCIT v. Inland Road Transport Ltd. (2022) 286 Taxman 613 (Cal)(HC)

S. 69 :Unexplained investments-Search and Seizure-Seizure of Jewellery-Consignee-Payments were accounted-Addition was held to be not justified-Directed to release of seized jewellery [S. 132. 153C, Art, 226]

The assessee is in the business of Gold Jewellery-During search conducted at premises of one Shri Suresh Kumar it was found that a consignor, one Parva Kundan & Diamonds PvtLtd. dispatched a package containing gold jewellery weighing 524.500 gms which was to be received by assessee as consignee. Said gold jewellery was seized. The Assessing Officer initiated proceedings under section 153C and made additions in assessee's income for seized value of gold jewellary by treating same as unaccounted investment.On writ against the said order, the Court held that the assessee purchased said gold from Parva Kundan & Diamonds Pvt Ltd for which payment was made through banking channels and purchases were duly accounted for in books of account of assessee. Accordingly, said purchases could not be termed as unaccounted investments and seized gold jewellery was directed to be released in favour of assessee. (AY. 2018-19)

Rakeshkumar Babulal Agarwal. v.PCIT (2022) 448 ITR 133 / 213 DTR 115/327 CTR 447/ 286 Taman 617 (Guj)(HC)

S. 69 :Unexplained investments-Excess stock during search-Books of account was incomplete –Retraction of statement-Deletion of addition was held to be justified [S. 132, 132(4)]

Dismissing the appeal of the revenue, the Court held that the assessee has proved purchase of excess stock with sufficient evidence and statement was retracted. Order of Tribunal deleting the addition was affirmed.

CIT v. Vishnu Prakash Sharma (2022) 440 ITR 324 (Raj) (HC)

S. 69 : Unexplained investments -Income from undisclosed sources- Notice returned unserved with the remarks "Not found" or "Left"- Payments were though account payee cheques – tax was deducted at source – Addition is not justified .[S. 133(6)]

Held, that in respect of both these parties all the necessary material and evidence such as bills, vouchers and rate contract were placed before the Assessing Officer as well as Commissioner (Appeals) and the payments were made by cheques after proper deduction of tax and similarly invoices for the commission paid after deduction of tax with reference to sales effected by him were placed on record. Deletion of addition is justified . (AY.2005-06)

Dy. CIT v. Global Wool Alliance Pvt. Ltd. (2022)100 ITR 12 (SN)(Kol.) (Trib)

S. 69 :Unexplained investments -Burden of proof on department – Documents impounded in the course of survey- Sale consideration was accepted in the assessment of seller – Addition is not justified [S.115BBE , 133]

Held that the sale consideration was accepted in the assessment of seller . Burden is on the Revenue to establish that the investment was made by the assessee. Addition is not justified . (AY. 2016 -17)

Vatika Ltd v. ACIT (2022) 100 ITR 23 (SN) (Delhi)(Trib)

S. 69: Unexplained investment - Stock figures and cash position different in statement furnished to the bank and in book of accounts-Statement given to third party not admissible as evidence- CIT(A) is justified in deleting additions. [133(6)]

The Tribunal held there was no infirmity in the order of the Commissioner (Appeals) as regards the difference in stock since in the assessee's own case for the immediately succeeding assessment year, the Tribunal had made an observation akin to that of the Commissioner (Appeals). As a result, the order of the Commissioner (Appeals) was upheld.(AY. 2013 -14)

ITO v. Ramesh Chand (2022)97 ITR 421 (Delhi) (Trib)

S. 69: Unexplained investments – Amount received from director – Officer should have verified the return of the director – Source of funds are explained-Addition was deleted . [S. 147, 148]

The Tribunal held that the assessee brought on record certain evidence to prove that the amount was received from one of its directors, who was an Income-tax assessee. The Assessing Officer should have verified the same from the return of the director regarding the source. , The Assessing Officer ought to have investigated from both the parties for verifying the veracity of the transaction. The assessee had discharged its primary burden by furnishing the source. The addition confirmed by the CIT (A) was deleted. (AY.2010-11)
Astral Properties and Constructions Pvt. Ltd v. ITO (2022)97 ITR 210 (SMC) (Delhi) (Trib)

S. 69: Unexplained investments - Difference between books of account and Valuation Report — Addition was deleted . [S. 142A]

The valuation report relied on by the Assessing Officer for making the addition was not a valuation report as contemplated under section 142A of the Act. To make addition on account of difference in cost of construction, the Assessing Officer was duty-bound to reject the books of account and refer the matter to the Departmental Valuation Officer as prescribed under section 142A of the Act, which the Assessing Officer had failed to do so. The registered valuer's report of the assessee could not be the basis for making the addition which had to be deleted. (AY.2003-04)

VRL Logistics Ltd. v. ACIT (2022)95 ITR 221 (Bang)(Trib)

S. 69 :Unexplained investments –Survey - Undervaluation of stocks—Reconciliation statement filed- Addition is not justified [S. 133A]
Held that there were several infirmities and mistakes committed by the survey team while doing stock-taking physically. In the reconciliation statement, the assessee had explained the stock differences minutely. It showed that the survey team had even omitted the stock to the extent of Rs.36,80,834.34 while calculating the excess stocks by committing various mistakes such as double accounting of stocks, wrong application of rates and various other reasons. None of the authorities had pointed out how the stock reconciled by the assessee was not correct. Therefore, the difference in stock inventory was only to the tune of Rs. 3,81,063.09. Accordingly the order of the Commissioner (Appeals) was to be modified and the Assessing Officer was to restrict the addition to Rs. 3,81,063.09.(AY.2015-16)

Dy. CIT v. Plasto Electronics Pvt. Ltd. (2022)95 ITR 93 / 218 TTJ 1 (SN)(Kol) (Trib)

S. 69 :Unexplained investments-Investment in purchase of house-Addition restricted to Rs. 1, 81 700 only. [S. 144, 147, 148]
Held that considering the explanation given by the assessee, addition is directed to be restricted to Rs. 1,81, 700 only. (AY. 2012-13)
Anuradha Pandey. v. ITO (2022) 197 ITD 168 (SMC) (Varanasi) (Trib)

S. 69 :Unexplained investments-Long term capital gains-Penny stock-Denial of exemption is not valid. [S. 10(38), 45, 131, 133A]

The AO assessed the consideration received on sale of shares as penny stock and denied the exemption on the basis of information received from the Investigation wing pertaining to survey action conducted in the case of company, i. e. First Financial Services Ltd in whose shares the asseee had transacted, statements recorded of other beneficiaries, finding of the Securities Exchange Board of India (SEBI) vide interim orders in case of First Financial Services Ltd, statement of assessee recorded pursuant summons issued u/s 131 of the Act, came to the conclusion that the proceeds received by the assessee as accommodation entry, which has been laundered in the form of bogus profit on sale of shares. Accordingly, the consideration received was assessed as unexplained investments. The disallowance was affirmed by the CIT(A). On appeal, the Tribunal held that the interim order of the SEBI was revoked and shares of First Financial Services Ltd was not treated as penny stock. Accordingly, the addition was deleted. (ITA.No. 143/M/ 2022 dt.13-10-2022)(AY. 2013-14)

Sunita Chaudhry (Smt) v.ITO (Mum)(Trib) www.itatonline.org

S. 69 :Unexplained investments-Search and seizure-Income of any other person-No satisfaction recorded-Data found in pen drive-Neither furnished the copy of statement nor an opportunity of cross examination-Addition on account of alleged cash loan was deleted [S. 131, 132(4) 153C]

Held that the Assessing Officer had merely relied upon extracts of certain uncorroborated excel sheets, found during the course of search. The Assessing Officer neither furnished the copy of statement nor an opportunity of cross examination. Addition on account of alleged cash loan was rightly deleted by CIT(A) (AY. 2011-12)

Prakash Chand Kothari v. Dy. CIT (2022) 94 ITR 49 (Jaipur) (Trib)

S. 69 :Unexplained investments-Search and seizure-Estimate of unaccounted sales-Merely on the basis of statement of clerk and Assistant General manager without corroborative documentary evidence, addition cannot be made. [S. 69A, 132]

Held that merely on the basis of statement of clerk and Assistant General manager without corroborative documentary evidence, addition cannot be made on estimate of unaccounted sales. *(*AY 2013-14 to 2018-19)

Fathimuthu Amma Mills Ltd. v. ACIT (2022)94 ITR 6 (SN)(Chennai)(Trib)

S. 69: Income from undisclosed sources-Entries in cash book on date of issue of cheque-Presented in Bank subsequently-Matter remanded for verification.

Held that the entries in the cash book were made on the date on which the cheque was issued but the cheques were presented in the bank at a subsequent date. Therefore, the withdrawal date from the bank was different from the entry date in the cashbook. The Assessing Officer was to verify whether on the date of entry the assessee had utilised the cash withdrawn for

making the payment or investment or for any other purpose. If the Assessing Officer did not find any utilisation of cash, the addition was to be deleted.(AY.2011-12)

Niyant Heritage Hotels (P.) Ltd. v ITO (2022)93 ITR 11 (SN)(Delhi) (Trib)

S. 69 :Unexplained investments-Deposit of cash in bank account-Addition was deleted-Cash deposits and withdrawal-Concealment penalty-Matter remanded. [S. 271(1)(c)]
Held, that the Assessing Officer had picked up only cash deposits entries from the bank account. But there was no reference to any withdrawals or re-deposits in the bank account. The addition was one-sided without considering the assessee's contention and the Commissioner (Appeals) had accepted the genuineness of Rs. 1.50 lakhs without any elaboration. Therefore, the matter was restored to the Assessing Officer to decide the issue afresh after affording reasonable opportunity of hearing to the assessee to explain the source of deposits in the bank account and consider the withdrawals made from the bank account, if any. The assessment and the penalty proceedings were held ex parte since the assessee could not participate in such proceedings because of dispute going on with his counsel. Therefore, the matter was restored to the file of the Assessing Officer to decide it afresh after providing reasonable opportunity of hearing to the assessee.(AY.2012-13)
Sudhir Angre v. ITO (2022)93 ITR 69 (SN)(Pune) (Trib)

Sunil Angre v. ITO (2022)93 ITR 69 (SN)(Pune) (Trib)

S. 69A : Unexplained money-Assessment against yard owners was completed-Addition of same income in the hands of the petitioner was directed to be deleted-Matter remanded. [S. 153C, Art, 226]

Court held that where assessment against yard owners was completed under section 153C and Assessing Officer had assessed income with addition of income in hands of yard owners and at same time, same material was used against petitioner firm, though prior to it he was satisfied that material found from search belonged to yard owners, addition of income in hands of petitioner firm was not justified.Matter was remanded to Assessing Authority to make assessment afresh eliminating material used in assessment of yard owners to make addition of income of petitioner firm. (AY. 2014-15 to 2017-18)
SRS Mining v. UOI (2022) 328 CTR 510 / 217 DTR 321 / 141 taxmann.com 272 (Mad)(HC)

S. 69A : Unexplained money-Alternative remedy-Writ is not maintainable-Statutory appeal is the remedy [S. 246A, Art, 226]

Assessee was a vegetable vendor who collected cash from wholesale market and deposited same in bank account. The Assessing Officer passed assessment order treating said deposit as unexplained money of assessee. Assessee filed writ petition against assessment order. Dismissing the petition, the Court held that since alternate statutory remedy by way of appeal under section 246A was available to assessee, writ petition filed against assessment order was not maintainable. (AY. 2017-18)(SJ)

Arunachalam Nadar Muthuraj v. ITO (2022) 441 ITR 107/ 285 Taxman 415 (Mad)(HC)

S. 69A : Unexplained money-Survey-Addition on hypothetical basis-Deletion of addition by the Tribunal is affirmed. [S. 133A, Indian Evidence Act, 1872, S. 65B]

The assessee had sold many flats. In the course of survey and search in the premises of the assessee, a CD was found and in the said CD sale transaction of Mr Devendra Singh Tomar was found. The Assessing Officer simply multiplied difference in sale price of Rs. 8.55 lakhs to number of flats sold and added a sum of Rs. 3.06 crores under section 69A as disallowance on account of undisclosed money. Commissioner (Appeals) dismissed appeal but reduced undisclosed income to Rs. 2.97 crores. On appeal, the Tribunal accepted explanation of assessee that initially said flat, of which letter was found, was negotiated and sold for a sum of Rs. 59.34 lakhs, however, said booking was cancelled on ground that agreed price was much higher than prevailing market price. Thereafter, Devendra Singh Tomar approached assessee and negotiated to purchase flat at Rs. 49.18 lakhs which amount said Devendra Singh Tomar paid in three instalments. Devendra Singh Tomar had also filed an affidavit giving details as well as proofs of payment. There was no evidence found against assessee and no enquiry was carried out by Assessing Officer to find out more details and entire addition had been made on hypothetical basis. Tribunal deleted the addition. Order of Tribunal is affirmed.

PCIT v. Nexus Builders and Developers (P.) Ltd. (2022) 285 Taxman 233(Bom)(HC)

S. 69A : Unexplained money - Cash deposit in bank - Demonetisation period — Sale of flat – Addition was deleted .

Cash deposited from the sale proceeds of cash. Delay in depositing the cash was the assessee was out of India . Addition was deleted .(AY. 2017-18)

Karishma Sharma (Ms.) v. ITO(IT) (2022) 98 ITR 65 (SN)(Bang) (Trib)

S. 69A : Unexplained money - Cash deposited in Bank account – Withdrawal from bank – Proper explanation was furnished - Addition was deleted.

Held that the assessee has explained the cash deposits in her bank account on the basis of cash withdrawals made in earlier two years for purchase of some property which did not fructify and also explained and duly disclosed the source of deposits in the bank account out of which such withdrawals were made, the explanation of the assessee cannot be rejected only for the reason that there was a long time-gap between the said withdrawals and redeposit of the amount in the bank account . Addition was deleted . (AY. 2017-18)

Krishna Agarwal (Smt) v. ITO (2022) 215 TTJ 245 / 213 DTR 74 (Jaipur)(Trib)

S. 69A : Unexplained money -Cash deposited in the bank – Explanation was not satisfactory – Addition was justified – Income from undisclosed source – Stock valuation - Suppression of stock – Addition was deleted [S. 69 , 145]

Held that the contention of the assessee that the cash deposited in his bask account was sourced from the funds lying in the common pool with him and his son, being an explanation devoid of any merit cannot be accepted at the relevant point of time. e. when the assessee

deposited the money in his bank account the assessee was the owner of the same which was not recorded in his books of accounts and there being no explanation about the nature and sources of the acquisition of the same the impugned amount was nightly treated as unexplained money and brought to tax under S. 69A . Tribunal also held that once the CIT(A) has relied on the revised stock statement made by the assessee in the course of assessment proceedings to vacated the addition made by the AO on account of alleged sales of bullion outside the books of account, there was no justification to sustain the addition of account of alleged suppression of closing stock of bullion by rejecting the very same revised stock statement and relying upon the original stock statement transactions were not reflected. (AY. 2013 -14)

Kuldeep Kumar v. ITO (2022) 213 DTR 201/217 TTJ 632(Amritsar)(Trib)

S. 69A : Unexplained money - Search and Seizure — Shortage of physical stock - Only profit element embedded in sale transaction can be brought to tax . [S. 132]

Held, that since there was only shortage of physical stock to the extent of 48.94 carats, only the profit element embedded in the sale transaction could be brought to tax. Therefore, the Assessing Officer was to compute the gross profit portion on the sales and tax the assessee accordingly. Relied on UNI Design Jewellery Pvt. Ltd. v. DY. CIT (I. T. A. No. 2578/Mum/2018, dated December 30, 2019. .(AY. 2009-10 to 2012-13)

Dy. CIT v. Mahendra Brothers Exports Pvt. Ltd. (2022) 99 ITR 537 (Mum)(Trib)

S. 69A : Unexplained money – Senior Citizen - Deposit of cash during demonetisation period —Withdrawal from bank – Addition was deleted [S.115BBE]

Held that the fund flow statement clearly showed that each and every withdrawal had been mentioned and utilisation thereof and the money being withdrawn from the bank account. Even after household withdrawals, there was a huge amount available with the assessee in the form of cash. Therefore, it could not be held that the assessee did not have any availability of cash at the time of demonetisation. The assessee had no source of income apart from rental or pension income and some interest amount and this income earned regularly had been withdrawn regularly leaving very little cash in the bank account. This showed that the assessee was in the habit of keeping money in the form of cash probably looking to his old age and various ailments. Thus, it could not be presumed that the cash deposited by the assessee was out of his undisclosed sources. Accordingly, the addition of Rs. 44,13,000 sustained by the Commissioner (Appeals) to be deleted.(AY. 2017-18)

Om Prakash Nahar v. ITO (2022)100 ITR 345 (Delhi)(Trib)

S. 69A : Unexplained money -Money received from relatives- entries recorded in the books of accounts- Explanation of the purpose of receiving the money given- Identity of persons not in doubt- payments received through banking channel- Addition made not proper.

The Tribunal held that the entries relating to the advances received were recorded in the books of account. The assessee had furnished all the details relating to the source of advance received by him. Hence, the additions made by the A.O. were not justified.(AY. 2014-15)

Jagmohan Kaur Bajwa (Smt.) v. ITO (2022)97 ITR 149 (Chd) (Trib)

S. 69A: Unexplained money -Agricultural income – Disallowance at 25 Per Cent of expenses incurred for earning agriculture income is held to be reasonable.

The Tribunal held that the details of expenditure and quantification of goods could not be questioned from the purchasers or traders of the goods because they were general merchants and commission agents, and not farmers from whom the Assessing Officer could expect details. For the assessee's own case for the AY 2015-16, the assessee agreed to disallowance of 10 per cent. of the agricultural income returned. Since the assessee had not explained the expenses incurred in earning the agricultural income, it was appropriate to make a disallowance at 25 per cent. of the expenses incurred for earning the agricultural income. Therefore, the Assessing Officer was to make a disallowance to the extent of 25 per cent. of the expenditure on account of earning of agriculture income. (AY. 2014-15)

Jigar Ashok Hebra v. ITO (2022) 96 ITR 310 (SMC) (Ahd) (Trib)

S. 69A: Unexplained money – Cash deposits - Information received from Enforcement Directorate of cash deposits in bank accounts- Rule of consistency — Addition was deleted . [S. 69]

The Tribunal held that the assessee's returned income was also accepted in the AY .2012-13. The authorities had no reason to disbelieve the assessee's claim of having earned tuition income in this AY as well for the reason of rule of consistency. Therefore, the authorities had no justifiable reason to make the additions. (AY. 2011-12, 2013-14)

Sarabjit Kaur (Smt.) v. ITO (2022)96 ITR 440 (Chd))(Trib)

S. 69A: Unexplained money - Deposits of cash in bank account — Cash withdrawals from bank account more than cash deposited- Addition is not justified .

Tribunal held that the Assessing Officer had never disputed the fact that the cash withdrawals from the bank account were more than the cash deposited in it. The Assessing Officer had accepted cash withdrawals from the bank on earlier occasions as the source for cash deposits on subsequent dates, wherever the gap between the cash withdrawal and cash deposit was less than 3 to 5 days. When the Assessing Officer had accepted the explanation of the assessee wherever cash deposits were made within a period of 2 to 5 days, he ought not to have made additions towards remaining cash deposits, when the assessee had explained the source for the cash deposits as out of cash withdrawals from the same bank account, unless the Assessing Officer demonstrated that withdrawals on earlier occasion had been used by the assessee for any other purposes. In the absence of any finding contrary to the explanation of the assessee that the cash deposits in the bank account were out of withdrawals on earlier occasions could not be disregarded. The Assessing Officer ought not to have made additions towards cash deposits into bank account only for the reason that there was a time gap of more than 3 to 5 days between the cash withdrawals and the cash deposits from a very same bank account. The addition was delete (AY. 2017-18)

Shanmugam Ethiraj v. ITO (2022) 96 ITR 17 (SN) (Chennai) (Trib)

S. 69A : Unexplained money – Income from undisclosed sources – Data retrieved from the hard disk revealed undated, unsigned and unexecuted draft deed and draft cash receipt relating to the transaction of sale of property between the assessee and third party – Such draft deed and originally executed deed being exactly similar such material cannot be ignored- Addition was up held – Reassessment was held to be valid [S. 147 , 148]

Held that, the Revenue authorities having discovered undated, unsigned and unexecuted draft deed and draft cash receipt from a hard disk found during the course of search conducted against a third party which revealed that the assessee received unaccounted amount of Rs. 4 crores in cash on sale of a property, and names of the vendor and vendee and the details of cheque by which part of the sale consideration was received as mentioned in the said draft deed and the original sale deed executed by the assessee are exactly similar, said material evidence cannot be ignored and brushed aside simply because the draft agreement was undated and unstamped and, therefore, impugned addition under s. 69A of the Act is up held. Though cash was found addition under section 69A is up held relied on CIT v. Bimal Parikh Gupta (1989) 179 ITR 613 (P& H)(HC) wherein the Court held that the expression "income " as used in section 69A has a wide meaning and means anything which come in or result in gain . (AY .2011-12)

DCIT v. Shivram Consultants India (P) Ltd. (2022) 220 TTJ 640 / 220 DTR 9 (Delhi) (Trib.)

S. 69A : Unexplained money-Deposit-Sale proceeds of book and donation-Matter remanded for reverification. [S. 147, 148]

Reassessment notice was issued to assessee to explain an amount of Rs. 45,55,746 being deposited by assessee in its bank account during year. Assessee explained that an amount of Rs. 21,33,123 was donation given to Dalai Lama Charitable Trust, Dharamshala by devotees of Dalai Lama who visited Varanasi in January, 2009 for teaching and said amount was transferred by it to Dalai Lama Charitable Trust by getting demand draft from bank account and it had only facilitated transfer of donation from Varanasi to Dharamshala. It further explained that rest of amount of Rs. 24,22,627 in bank account was on account of sale of books and advances received for University work. Assessing Officer did not accept explanation for want of supporting documents and added entire amount to income of assessee as unexplained money under section 69A of the Act. Held that the addition was made by the Assessing Officer without verifying the facts hence the matter was remanded to the Assessing Officer these facts was not justified to re-adjudicate the issue after considering all details and evidences. (AY. 2009-10)

Central Institute of Higher Tibetan Studies. v. ITO (2022) 197 ITD 310 / 98 ITR 29 (SN) (Varanasi) (Trib)

S. 69A : Unexplained money-Immoveable property-Survey Draft sale deed-Not signed-Application filed by developer before Settlement Commission admitting to have invested certain amount of unaccounted income was not provided for confrontation-Addition is deleted. [S. 133A, 148]

Based on a survey operation conducted under section 133A on a developer, namely OHM, the AO held that there was a draft sale deed between assessee and developer which was reported less/short by assessee. Based on such information, reassessment proceeding was initiated. Assessee sought for a copy of application filed by developer before Settlement Commission admitting that it had invested certain amount of unaccounted income on purchase of property along with order passed by Settlement Commission. However, same was denied on ground that it was confidential information of third party and subsequently additions on account of unaccounted income on purchase of property were made in assessee's total income. Held that draft sale deed based on which additions were made was never signed by assessee and therefore had no credence. It was further noted that admission before Settlement Commission made by third party could not be used against assessee until and unless same was provided to assessee for confrontation. Since application made by developer

did not establish fact that assessee had received unaccounted payment which was liable to be taxed, impugned additions made were to be deleted. (AY. 2015-16)
Rajvee Tractors (P.) Ltd. v. ACIT (2022) 98 ITR 459 / 197 ITD 442 / (2023) 222 TTJ 778 (Ahd) (Trib.)

S. 69A : Unexplained money –Hospital-Demonetization-Sale of medicine and cash in hand-Direction of commissioner to increase declared book profit by 4 per cent of total amount deposited by assessee-Addition is deleted-[S. 145.]
Held that from books of account and corroborative documents placed on record, it was found that there was no dispute about availability of cash balance and its source as assessee duly recorded it in its books of account. Once, availability of cash in hand was proved, assessee could not be asked to furnish proof of acquisition of such amount in currency notes of particular denomination. Cash balance being part of sale of medicines and hospital receipts, could not be brought to tax at hands of assessee again which will otherwise lead to taxing same amount twice. Addition is deleted. Held addition made an upward estimation and directed Assessing Officer to increase declared book profit by 4 per cent of total amount deposited by assessee in Specified Bank Notes is deleted. (AY. 2017-18)
DCIT v. M.C. Hospital. (2022) 197 ITD 706 (Chennai) (Trib.)

S. 69A : Unexplained money-Vouchers-Cash book-Search-Matter was remanded back for reconsideration. [S. 132, 153A]
Assessing Officer made additions on account of difference in cash in books of account as compared to physical cash. Held that certain vouchers pertaining to cash transactions undertaken on day prior to search were not updated in cash book which led to difference in cash found and books. Since Assessing Officer did not consider same while making assessment, matter was remanded back for reconsideration. (AY. 2011-12)
Uttam Sugar Mills Ltd. v. DCIT (2022) 196 ITD 601 (Delhi) (Trib.)

S. 69A : Unexplained money-Cash-Demonetization-Cash deposits made in bank accounts-Books of account not rejected-Addition based on surmise and conjectures was deleted. [S. 132, 115BBE, 153A]

Assessee is engaged in business of trading of textiles and was also engaged in sale of cloth to its sister concern. The Assessing Officer made additions under section 69A in respect of cash deposited in the bank account of the assessee. Held that no incriminating material was found during search to point out that unaccounted cash was introduced under grab of sales from sister concern. Accordingly, the additions made by Assessing Officer were without any foundation and were merely based on surmise and conjectures and deleted. (AY. 2017-18)
Tripta Rani. (Smt.) v. ACIT (2022) 97 ITR 389 / 196 ITD 662 (Chd) (Trib.)

S. 69A : Unexplained money-Demonetization deposit-Mere mismatch of denominations of currency notes would not lead to addition where currencies of past savings might have mixed with currencies withdrawn.
Aassessee-agriculturist deposited Rs. 15 lakhs in his bank account. Assessee submitted that said Rs. 15 lakhs was withdrawn from Kisan Credit Card (KCC) Limit Account which remained unutilized.Assessing Officer found mismatch of denomination in deposit and withdrawal and subsequently, invoked section 69A and made additions in assessee's income. On appeal, the Tribunal held that since assessee had discharged onus of explaining that deposit made in its bank were his own funds, additions made under section 69A were to be completely deleted. (AY. 2017-18)

Vardhan Ghildiyal. v. ITO (2022) 194 ITD 689 (Delhi) (Trib.)

S.69A: Unexplained money-Demonetization-AIR information-Amount deposited to bank from earlier withdrawals-Addition was deleted-Cash Deposits in Partnership Firm's bank Account-Amount transferred to partner's account as withdrawal from capital –Addition cannot be made in the hands of partner. [S. 2(31)iv),133(6)]

The assessee has deposited cash in his bank account between 09/11/2016 to 30/12/2016 (i.e. during the demonetization period). The AO treated the cash deposit during the demonetization period as unexplained money under section 69A of the Act. The AO also made addition in the hands of partner in respect of cash was deposited in bank account of "Nivara Builders and Developers" (Partnership firm). The CIT(A) affirmed the order of AO. On appeal, the honorable Tribunal held that as per the banks statements, the cash which was withdrawn by the Assessee was kept at his residents and due to demonetization on 08/11/2016, the assessee deposited the old bank notes into his Matunga (West) branch amounting to Rs.20 lakh on 10/11/2016. It is evident that the amount withdrawn by the assessee was much more than the amount deposited in the very same bank account. There was no record that the cash which was withdrawn was already utilized for any other purpose. Accordingly deleted the addition. Tribunal also held that merely on the basis that equivalent amount of cash amount deposited in the bank accounts of the firm was transferred within few days to the assessee (Partner), conclusion cannot be drawn that said cash deposits was unexplained money of the assesse (Partner). The transaction of cash deposit is made in the bank account of the firm, which is undoubtedly a separately assessed entity and the firm filed its separate return of income. Addition was deleted. Referred Jaspal Singh Sehgal v. ITO, [2017] 83 Taxmann.com 246 (Mum)(Trib.), Sudhirbhai Pravinkant Thaker v. ITO, [2017] 88 Taxmann.com 382 (Ahd.) (Trib.). (AY. 2017-2018)

Ajit Bapu Satam v. Dy. CIT(2022) 220 TTJ 153 / 218 DTR 119 (2023) 147 taxmann.com 222(Mum)(Trib.)

S. 69A : Unexplained money-Search of third party-Noting extracted from computer file-Addition cannot be made on presumptions.

Held that addition cannot be made due to some noting found in some file extracted from the computer of one, clearly establishes that the provisions of section 69A do not apply. More importantly, there is no mention of the assessee's name in the impugned document. The AO has simply assumed that the reference to the impugned amount is in relation to the assessee. No addition can be made on the basis of presumptions and surmises.(AY. 2013-14)
ACIT v. Jotindra Steel & Tubes Ltd. (2022) 94 ITR 359 (Delhi) (Trib)

S. 69B : Amounts of investments not fully disclosed in books of account-Assessment-Stock-Value of stock shown in stock statement as on 28-3-2005 submitted to bank was far in excess to value of stock shown in audit report for period ending 31-3-2005-No explanation was offered-Order of Tribunal was affirmed. [S. 143(3), 145]
Assessee was engaged in manufacturing and trading of edible oils and grains. Assessing Officer found that value of stock shown by assessee in stock statement as on 28-3-2005 submitted to bank was far in excess to value of stock shown in audit report for period ending

31-3-2005 and difference was to extent of Rs. 2.71 crores and assessee despite opportunity afforded could not either reconcile difference or explain reasons therefor, treated difference amount as unexplained investment in stock from undisclosed sources and added same to total income of assessee under section 69B of the Act. Commissioner (Appeals) deleted the addition by referring to a chart indicating stock position as on 28-3-2005 submitted to bank with stock position as per stock register on 28-3-2005. Tribunal held that assessee was bound to explain difference either before Assessing Officer or before Commissioner (Appeals) or before Tribunal and same was not done. Tribunal held that once it was found by Assessing Officer that there was excess stock, in absence of explanation by assessee, conclusion was inescapable that excess stock, if any, was from undisclosed sources. Order of Tribunal is affirmed. (AY. 2005-06)

Suraj Bhan Oil (P.) Ltd. v. DCIT (2022) 446 ITR 539 / 286 Taxman 680 (MP)(HC)

Editorial : SLP dismissed as withdrawn, Suraj Bhan Oil (P) Ltd v. Dy. CIT (2022) 288 Taxman 635 (SC)

S. 69B : Amounts of investments not fully disclosed in books of account – Jangad (memo of NE) –Rough rejections and rough diamonds- Valuation report – Addition was deleted . [S. 131]

Held, that the summons under section 131 of the Act was issued during the course of assessment proceedings and the proprietor of NE attended and furnished requisite details with written submissions. A statement was recorded from him wherein it was confirmed that 169.45 carats of diamonds was sent back to the assessee by NE on August 4, 2011. The explanation offered by the assessee was to be accepted and the Assessing Officer was directed to delete the addition made for the value of 169.45 carats of diamonds Held also, that for the remaining difference of 10.7 carats (180.15 – 169.45 carats) which the assessee explained as having arisen due to weighing difference, the Assessing Officer was to make an addition for 10.7 carats by applying the respective rates applicable for "rough rejections" and "rough diamonds" as mentioned in the Government Valuation report. This would meet the ends of justice.(AY. 2009-10 to 2012-13)

Dy. CIT v. Mahendra Brothers Exports Pvt. Ltd. (2022) 99 ITR 537 (Mum)(Trib)

S. 69B : Amounts of investments not fully disclosed in books of Account has to be explained as per the books of accounts maintained by the assessee-Explanation cannot be offered on the basis of amount reflecting in sister concerns books of account [S. 145]

The assessee purchased a property at Rs. 27.80 crore and recorded the same at only Rs. 14 crore. The remaining 13.8 crore was withdrawn out of the bank account of a sister concern and paid in cash to the seller for which the sister concern received no share of the property. The AO made addition under section 69B of unexplained investment of Rs. 13.8 crore. The CIT(A) granted relief to the assessee by deleting the addition made. On departments' appeal before the Hon'ble ITAT, the assessee contended that it has successfully proved the source of Rs. 13.8 crore being amount reflecting the books of its sister concern. However, the Hon'ble ITAT held that as the assessee had accepted that the value of the property purchased was Rs. 27.80 crore, the onus was upon the assessee to prove the amount expended in the books of account maintained by the assessee and not the books of the sister concern. Since the assessee was unable to prove the same from its books of accounts, the Hon'ble ITAT upheld the addition made by the AO. (AY. 2009-10)

DCIT v. Ambreen Projects & Infrastructure (P) Ltd. (2022) 216 TTJ 38/ 213 DTR 41 (Delhi) (Trib.)

S. 69C : Unexplained expenditure-Bogus purchases –Accommodation entries-Civil contract work-Municipal Corporation of greater Mumbai-Information received from the Sales Tax Department through the Director General (Inv)-Purchases through banking channels-Disallowance restricted to profit element-Order of Tribunal affirmed. [S. 143(3), 260A]

The assessee undertook civil contract works mostly for the Municipal Corporation of Greater Mumbai. The assessment was reopened on the basis of information received from the Sales Tax Department through the Director General (Inv) on the ground that the assessee had made purchases for an amount which seemed to be accommodation entries. Order was passed making an addition of the amount as bogus purchase under section 69C of the Act. On appeal the assessee has produced the purchase invoices and ledger statements. Commissioner (Appeals) held that payments made by the assessee were through banking channels, that there was no evidence to prove that the cash had flowed back to the assessee, and that the sale proceeds of the goods having been duly accounted for in the books of account and offered to tax, the entire purchase amount could not have been added and restricted the disallowance at 12.5 per cent. The Tribunal held that without purchasing materials and goods, it would not have been possible on the part of the assessee to execute the contract work with the Municipal Corporation which was a Government authority, that the Assessing Officer did not dispute the turnover of the contract work executed by the assessee and that unless the assessee procured the materials and goods, if not from the declared sources but from some other sources, it would not be possible on the part of the assessee to execute the contract and that the entire purchase made by the assessee could not be added back as income, but only the profit element embedded therein. On appeal,dismissing the appeal, the Court held that the Tribunal had taken into account all the relevant facts before passing the order holding that the entire purchase made by the assessee could not be added back as income but only the profit element embedded therein. The order of Tribunal was affirmed. Referred N.K.Proteins Ltd v.Dy.CIT (2020) 421 ITR 15 (St) N.K. Industries Ltd v.Dy.CIT (2017) 8 ITR-OL. 336 (Guj)(HC) (AY.2009-10)

PCIT v. S. V. Jiwani (2022)449 ITR 583/ 145 taxmann.com 230/(2023) 290 Taxman 178 (Bom)(HC)

S. 69C: Unexplained expenditure -Resale of industrial goods – Payments through account payee cheque – Disallowance of 10 percentage of purchases – Order of Tribunal affirmed [S. 133(6), 260A]

Dismissing the appeal of the Revenue the Court held that the assessee engaged in resale of industrial goods, made payments through banking channels towards certain purchases and furnished evidences in form of delivery challans, purchase bills etc. relating to same, Tribunal was justified in holding that assessee had discharged initial burden or onus of providing details of parties and, thus, case did not fall within ambit of section 69C. (AY. 2011-12)

PCIT v. Jagdish Thakkar [2022] 145 taxmann.com 414 (Bom)(HC)

S. 69C : Unexplained expenditure-Bogus purchases-Income from undisclosed sources--Civil works-Road construction-Information from Sales Tax Department-Order of Tribunal estimated profit of 12.5% on unexplained and non-genuine purchases is affirmed by High Court.[S. 37(1), 143(3), 260A]

The assessee is involved in the execution of Civil works like road construction etc.under the Public Works Department of the Government of Maharashtra and Municipal Corporation of the Government of Maharashtra. Based on the information received from the Sales Tax Department the Assessing Officer asked the assessee to explain purchases from twelve parties and was asked to produce the parties. The Assessee failed to do so. The Assessing Officer added the entire purchases as non-genuine expenditure. On appeal the CIT(A) restricted the addition by estimating profit of 12. 5% on the total purchases. On appeal the Tribunal up held the order of the CIT(A). On further appeal the High Court affirmed the order of the Tribunal. (AY. 2010-11) (ITA No. 398 of 2018 dt 18-7-2022)

PCIT v. Ram Builders (2023) 146 taxmann.com 447(Bom)(HC)

S. 69C : Unexplained expenditure-Bogus purchases–Restricted to 12.5 % of bogus purchases. [S. 133(6), 143(3)]

Held that considering the possibility of some cash sales without any transportation bills, lorry receipts, and disallowance of the bogus purchases was restricted to 12.5% of the total bogus purchases. (AY. 2009 10)

Macleods Pharmaceuticals Ltd. v. Dy. CIT (2022) 217 TTJ 763/ 214 DTR 105 (Mum)(Trib)

S. 69C : Unexplained expenditure -Gifts given to beneficiaries of chit fund scheme-Admitted Rs . 3. 2 crores as undisclosed income – Benefit of telescoping has to be given-WhatsApp messages - WhatsApp message sent from assessee's mobile phone-WhatsApp messages are a dumb document without any corroborative evidence on record- No addition can be made on the basis of said documents. [S. 153A]

Held that the AO was not justified in making addition under S. 69C on account of alleged distribution of cash by assessee to the voters simply by drawing adverse inference against the assessee on the basis of recovery of photo-identity cards of the voters of one assembly constituency from the premises of the assessee and some vague WhatsApp messages sent from the assessee's mobile phone without examining the recipient of the messages. The assessee has not contested the elections and none of the agencies deployed for monitoring the election process has filed any case against the assessee for indulging in any malpractice in the elections. (AY.2017-2018)

A.Jhonkar v. Dy. CIT v. Johnkumar Trust (2022) 220 TTJ 187 (Chennai) (Trib)
Dy. CIT v. Johnkumar Trust (2022) 220 TTJ 187 (Chennai) (Trib)

S. 69C : Unexplained expenditure – Unable to identify the purchasers – Sale of finished goods subject to tax – Entire purchases cannot be disallowed – Addition was restricted to 10% of purchases – Income from undisclosed sources - Fixed deposit in bank – Matter remanded .[S. 68 , 26AS]

Tribunal held that though the assessee is unable to identify the purchasers , sale of finished goods was subject to tax , therefore entire purchases cannot be disallowed . Addition was restricted to 10% of purchases . Difference between fixed deposit shown by assessee and investments shown in annual information. Matter remanded to Assessing Officer for verification.(AY.2011-12)

Accra Pac (India) Pvt. Ltd. v. Dy. CIT (2022)100 ITR 30 (SN)(Ahd) (Trib)

S. 69C: Unexplained expenditure – Undisclosed income declared during search and seizure- Income credited to books of accounts- Corresponding expenditure to also be included- CIT (A) justified in deleting additions.[S. 132(4)]

The Tribunal held that once the income was credited to the profit and loss account, corresponding expenditure relatable to the income also had to be debited into the profit and loss account. There was no error in the reasons given by the Commissioner (Appeals) to delete addition made towards undisclosed income found during the course of search. (AY 2014-15)

ACIT v. Vendhar Movies (2022)97 ITR 17 (SN.) (Chennai) (Trib)

S. 69C : Unexplained expenditure - Site expenses — Support services To telecommunication operators and functioning at more than 3,300 work sites - Not Tenable.[S. 144, 145]

The Tribunal held the assessee had discharged the initial onus to prove the veracity of the claim of expenditure and no defects were pointed out by the Assessing Officer or the Commissioner (Appeals) in respect of the audited books of the assessee inasmuch as the books of account had not been rejected. Hence, the ad hoc disallowance of expenditure could not be countenanced. Even if certain flaws were found during the assessee's special audit conducted for the earlier year, the special audit report could not be the sole ground for disbelieving the expenditure claimed in the relevant year, without first discarding the evidence brought on record by the assessee to substantiate the claim and that too with cogent reasons. No ad hoc disallowance could be made without following the due process of law as contemplated under sections 145 and 144 of the Act. Therefore, the action of the Commissioner (Appeals) in disallowing 90 per cent. of the expenses was arbitrary and against the "rule of law". the bills and vouchers were duly produced before the Commissioner (Appeals) and also sent to the Assessing Officer for his remand report. Not only were the expenses recorded in the books of account but the assessee was also able to prove the source of expenditure claimed. The assessee had demonstrated that the source of expenses was the revenues earned during the year. (AY. 2014-15)

Welkin Telecom Infra (P.) Ltd. v. Dy. CIT (2022)96 ITR 475 (Kol) (Trib)

S. 69C : Unexplained expenditure - Office expenses — Inadvertent error – Salary and wages – Wrongly debited to office expenses – Addition is not justified .

Held that the expenses were incurred for the purpose of procuring items such as hand soaps, bleaching powders, tea, snacks, coffee, stationary, and coffee and tea vending machines which were necessary for unit work sites also spreading to 3,000 places. These items were purchased in the normal course of business and were necessary for the smooth functioning of the business, and section 69C could not be invoked. (AY. 2014-15)

Welkin Telecom Infra (P.) Ltd. v Dy. CIT (2022)96 ITR 475 (Kol) Trib)

S. 69C : Unexplained expenditure - Transportation expenses — Mistake of accountant-Salary expenditure has been shown as expenses along with transportation expenses-Disallowance is not justified .

The Tribunal held that due to the mistake of the accountant, Rs. 28,80,000 had been shown as expenses along with transportation expenses booked by the assessee. The transport expenses were to the tune of Rs. 2,40,457 and the balance sum of Rs. 28,80,000 was on account of salary expenditure. The disallowance was deleted . (AY. 2014-15)

Welkin Telecom Infra (P.) Ltd. v . Dy. CIT (2022)96 ITR 475 (Kol) (Trib)

S. 69C : Unexplained expenditure - Miscellaneous expenses — Self made vouchers – Allowable as deduction .

The Tribunal held that merely because expenses were incurred in cash and were supported by self-made vouchers, they could not be disbelieved for making disallowance in the hands of the assessee. The Commissioner (Appeals) had not recorded any specific finding to allege that the expenses incurred by the assessee were either ingenuine or not incurred for the purposes of business. (AY. 2014-15)
Welkin Telecom Infra (P.) Ltd. v. Dy. CIT (2022)96 ITR 475 (Kol) (Trib)

S.69C: Unexplained expenditure — Expenditure on raising of loan —Notional and hypothetical addition — Cannot be sustained.

That the addition of Rs. 1,00,000 as an unexplained expenditure under section 69C towards raising of loan from D was a purely notional and hypothetical addition made on the hypothesis that the assessee might have incurred expenditure as commission for the accommodation entry for raising of loan from D. There was no basis for giving this hypothetical addition which was not based on any enquiry or any material on record and it could not be sustained. (AY.2011-12)

Young Indian v. ACIT (E) (2022)95 ITR 33 / 218 TTJ 1 (Trib) (SN)(Delhi)(Trib)

S. 69C:Unexpalined expenditure - Cash credits - Method of accounting –Unexplained expenditure - Difference between amount reflected in books of account and in Form 26AS – No defects in the books of account- Addition was deleted [S.68, 133(6), 145 , Form No 26AS]

The Assessing Officer made addition as unexplained expenditure - cash credits due to difference between amount reflected in books of account and Form 26AS . The addition was affirmed by the CIT(A) . On appeal the Tribunal held that , when there is no defects in the books of account and in response to section 133(6) party has confirmed the amount books of account is audited by an independent Auditor , the addition. Was deleted . (AY. 2013 -14)
Shri Jeen Mata Buildcon (P) Ltd v. ITO (2022) 97 ITR 706 (Jaipur)(Trib)

S. 69C: Unexplained expenditure- Bogus purchases- If purchases are accepted in subsequent years, information/reasons based solely on investigation wing report and on statement recorded of third party with no independent satisfaction of AO, no opportunity to cross-examine parties then reopening and addition not sustainable [S. 143(3), 147 , 148]

Where the reopening is done on the basis of the investigation wing report without further corroboration of the statement of a third party and the bogus purchases have been accepted in

the subsequent year and where there is no opportunity of cross-examination of the third parties provided and there is non-application of mind inasmuch as the figures mentioned in the reasons is different from the material available on record then the notice is to be quashed. (AY. 2010-2011)

Supertech Forgings (India) Pvt. Ltd. v. DCIT (2022) 217 TTJ 161/ 214 DTR 33 (Amritsar)(Trib)

S. 69C : Unexplained expenditure-Ad-hoc addition of sundry creditors-20 percent of purchases-Discrepancies in balance sheet was reconciled-Addition is not valid. [S. 145]

Held that the assessee had filed confirmations of sundry creditors for purchases and discrepancies in opening balance as per balance sheet had been duly reconciled. Deletion of addition by CIT(A) is affirmed. (AY. 2012-13)
DCIT v. AYG Realty Ltd. (2022) 197 ITD 448 (Mum) (Trib.)

S. 69C : Unexplained expenditure-Bogus purchases-Trading and manufacturing of diamonds-Purchases from tainted dealers-Report of Task Force for Diamond Sector constituted by Ministry of Commerce and Industry-Profit element embedded in value of disputed purchases for diamond manufacturers was to be estimated in range of 1.5 per cent to 4.5 per cent [S. 40A(3), 145]
Assessee is engaged in business of trading and manufacturing of diamonds. Assessee made purchases from certain tainted dealers Assessing Officer held that assessee made purchases from grey market to save indirect taxes and, thus, incidental profit element which was embedded in value of said purchases was to be brought to tax.He estimated profit element embedded in value of disputed purchases at 5 per cent. Commissioner (Appeals) reduced same to 3 per cent. Held that report of Task Force for Diamond Sector constituted by Ministry of Commerce and Industry recommended that net profit prevailing in diamond industry engaged in business of trading would be in range of 1 per cent to 3 per cent and those engaged in business of manufacturing would be in range of 1.5 per cent to 4.5 per cent. Since Tribunal had consistently taken stand by estimating profit element on basis of reliance placed on report of Task Force, Commissioner (Appeals) was duly justified in estimating profit percentage of 3 per cent. (AY. 2010-11, 2011-12,2013-14)
Oopal Diamond. v. ACIT (2022) 197 ITD 827 (Mum) (Trib.)

S. 69C : Unexplained expenditure-Bogus purchases-Justified in deleting 100 percent disallowance and disallowing to 12. 5% out of bogus purchases.

Dismissing the appeal of the Revenue the Tribunal held that the CIT(A) was justified in deleting 100 per cent disallowance of purchases by Assessing Officer and limiting disallowance to 12.5 per cent out of bogus purchases. (AY. 2012-13)
DCIT v. DBM Geotechnics and Construction (P.) Ltd. (2022) 194 ITD 579 (Mum) (Trib.)

S. 69C : Unexplained expenditure-Additions cannot be made when the Assessee has discharged his onus of providing all the genuine details within his ambit to prove the genuineness of a transaction.[S.133(6)]

Held thatthe assessee had discharged its onus to prove the genuineness of the purchases and merely because notice u/s. 133(6) of the Act, which had been duly served but not responded to, by the supplier/dealer, no adverse inference could be drawn on the assessee. Also, the AO has not brought on record any material evidence to conclusively prove that the said purchases are bogus. Without causing any further enquires in respect of the said purchases, the AO cannot make the addition under section 69C of the Act by merely relying on information obtained from the Sales Tax Department.(AY.2009-10,2010-11, 2011-12)

Sapankumar U.Jain v. ITO (2022) 94 ITR 216(Mum)(Trib)

S. 69C : Unexplained expenditure-Bogus purchases-Books of account not rejected-Identity of party established and genuineness of transactions proved-Deletion of addition is justified. [S. 145]

Held that the assessee furnishing sworn affidavit of sellers, purchase bills, Sales Tax return, Income-Tax returns of parties, Value Added Tax Number of sellers and all payments made through banking channel, identity of party established and genuineness of transactions proved deletion of addition is justified. Assessing Officer making addition on Ad hoc basis without rejecting books of account is not valid.(AY.2011-12)

ACIT v. Vishal Paper Industries Pvt. Ltd. (2022)93 ITR 41 (Chd) (Trib)

S. 69C : Unexplained expenditure-Bogus purchases-Accommodation entries-CIT(A) estimated at 25 percent-Tribunal restricted the addition to 12.5 percent.

CIT(A) CIT(A) estimated at 25 percent. On appeal the Tribunal restricted the addition to 12.5 percent.(AY.2007-08)

Anil Arora v. ITO (2022)93 ITR 56 (SMC)) (SN) (Delhi) (Trib)

S. 69C : Unexplained expenditure-Bogus purchases-Sales accepted-Disallowance restricted to 12.5 % of aggregate value of alleged bogus purchases.

Assessee made purchases from two parties, however, same were disallowed on ground that purchases so made were not genuine. Assessee in support of its claim of having made genuine purchases, placed on record, copy of confirmation of aforementioned parties and also placed on record copy of invoices pertaining to purchases claimed to have been made-However, on a perusal of invoices, it was found that nowhere, details of lorry receipt number and date, vehicle number etc. was mentioned therein. The Assessing Officer disallowed the purchases. On appeal, the Tribunal held that since sales of assessee company had been accepted by department, it could be safely concluded that assessee had purchased goods in question not from aforementioned parties but at a discounted value from open/grey market. Therefore, disallowance was restricted to 12.5 per cent of aggregate value of impugned purchases. (AY. 2014-15)

Kimaya Impex (P.) Ltd v. ITO (2022) 193 ITD 710 (Mum) (Trib.)

S. 70 : Set off of loss-One source against income from another source-Same head of income-Loss on sale of shares and units of mutual funds on which STT was paid-Set-off of loss against sale of land-Loss cannot be set off against long term capital gains arising from sale of land [S. 10(38), 45, 48, 55, 70(3)]

The assessee had incurred loss on sale of shares and units of mutual funds on which STT was paid. The assessee claimed to set-off said loss on shares against the capital gains arising out of the sale of land and accounted the net figure for purpose of capital gains. The Assessing Officer disallowed said claim on ground that the loss suffered by the assessee on the sale of a long-term capital asset was covered under section 10(38) and could not be set-off under section 70(3) since, the computation of such income or loss was not made under sections 48 to 55 of the Act. On appeal, the CIT(A) and Tribunal up held the order. On appeal,the Court held that since shares sold would come under section 10(38) and income from sale of shares would be excluded from computation of income of assessee, capital loss on sale of such shares could not be set off against long-term capital gains arising out of sale of land. (AY. 2005-06)

Appolo Tyres Ltd. v. Dy. CIT (2022) 284 Taxman 229/ 219 DTR 80 / 329 CTR 288 / (2023) 450 ITR 618 (Ker.)(HC)

S. 71 : Set off of loss-One head against income from another-Capital gains-Exempt income –Short-term capital loss from shares could not have been set off against any tax-exempt income covered under Chapter III [S. 10(38)]

Held that exempted incomes do not enter into the computation of total income and hence such incomes are not available for set off of any loss. Accordingly, the short-term capital loss from shares could not have been set off against any tax-exempt income. Chapter III prescribes incomes that are not to be included in the total. Accordingly, the Revenue was not justified in disallowing the assessee's claim for carry forward of loss, by setting off same against long-term capital gains from shares that were tax-exempt under section 10(38) of the Act. (AY. 2016-17)

Sikha Sanjaya Sharma. (Mrs.) v. DCIT (2022) 195 ITD 178/ 217 TTJ 373/ 213 DTR 65 (Ahd) (Trib.)

S. 72 : Carry forward and set off of business losses-Foreign companies-Franchise fees from an Indian company-Rate of tax is not relevant-Loss is allowed to be set off [S. 115A(1)(b)]

Assessee-foreign company, a tax resident of Hong Kong, operated satellite television channels and derived income from selling advertising airtime on channel, distribution of channel, syndication of content and other allied activities. During relevant assessment year, assessee received franchise fees from an Indian company and claimed set-off of said income against brought forward business loss from assessment year 2011-12. Assessing Officer denied said claim on ground that franchise fees was in nature of royalty income which was taxed in accordance with provisions of section 115A(1)(b) at rate of 27.04 per cent and could not be set-off against business loss as receipts from business were taxed at 42.23 per cent Held that rate of taxation was not a relevant factor so to determine eligibility of income for set-off and all that was necessary was it must consist of profits and gains of any business or

profession carried on by the assessee and assessable for that assessment year. Accordingly claim of loss is allowed to be set-off (AY. 2011-12)

DCIT (IT) v. Channel V Music Networks Ltd. (2022) 197 ITD 510 / 220 TTJ 537/ 218 DTR 350(Mum) (Trib.)

S. 72A : Carry forward and set off of accumulated loss and unabsorbed depreciation-Amalgamation-Demerger-[S. 2(19AA)]

Where assessee was denied set-off of brought forward losses of a demerged unit under section 72A on pretext that it was not sold as a going concern and did not satisfy demerger defined under section 2(19AA), it would be incongruous to construe sub-clause (vi) of section 2(19AA) as to mean a running unit and, therefore, impugned denial of benefit of section 72A was unjustified (AY.2007-08)

CIT v. KBD Sugar & Distilleries Ltd. (2022) 220 DTR 483 / 144 taxmann.com 38 (Karn) (HC)

S. 72A : Carry forward and set off of accumulated loss and unabsorbed depreciation – Amalgamation – Assessing Officer had rejedcted claim for carry forward of business loss – loss is not available to set off. [S. 79]

Company Kovalam Hotels Ltd. got amalgamated with assessee-company with effect from 1-4-2006 . Company Kovalam Hotels Ltd. In the assessment year 2006-07 Kovalam Hotels Ltd claimed carry forward of business loss of earlier years . Assessing Officer of company Kovalam Hotels Ltd held that business loss was not available for carry forward to next assessment year 2007-08 because provisions of section 79 were applicable in instant case . Appeal against impugned order was pending before Commissioner (Appeals) Assessee-company in assessment year 2007-08 claimed set off of brought forward loss pertaining to company Kovalam Hotels Ltd . Tribunal held that once Assessing Officer in case of company Kovalam Hotels Ltd for assessment year 2006-07 had already rejected claim for carry forward of said business loss in terms of section 79 then same could not be available to assessee for set off under section 72A until and unless said finding of Assessing Officer was reversed by higher appellate authorities . Assessing Officer was directed to give effect of set off of business loss in case of assessee consequent to finding of appellate authorities in case of company Kovalam Hotels Ltd on issue of carry forward of business loss under reference . (AY.2007-08)

ACIT v. Hotel Leela Venture Ltd. (2022) 219 TTJ 1087 / 218 DTR 233 / (2023) 146 taxmann.com 350 (Mum)(Trib)

S. 72A : Carry forward and set off of accumulated loss and unabsorbed depreciation – Losses of amalgamating company- High Court approved the scheme of merger- The merger scheme cannot be disturbed by the Revenue by merely alleging that the merger was only to buy losses and that it is a colourable device . [R. 9C Companies Act, 1956 S. 391(7)]

Held that High Court has approved the scheme of merger, the same cannot be disturbed by the Revenue by merely alleging that the merger was only to buy losses and that it is a colourable device; since assessee has fulfilled all the three conditions stipulated in S. 72A(2) cumulatively and also the requirement stipulated in R. 9C, set off of losses of the amalgamating company is allowable in the hands of the assessee. Followed Pentamedia Graphics Ltd. v. ITO (2010) 236 CTR 204 (Mad) (HC) Casby CFS (P) Ltd., In re (2015)

231 Taxman 89 (Bom) (HC) followed; J.K. (Bombay) (P) Ltd. v. New Kaiser- Hind Spinning Weaving Co, AIR 1970 SC 1041 and Sadanand Varde. v. State of Maharashtra (2001) 247 ITR 609 (Bom)(HC) (AY.2003-04)
Dy. CIT v. Piramal Enterprises Ltd. (2022) 216 TTJ 802 (Mum)(Trib)

S. 72A : Carry forward and set off of accumulated loss and unabsorbed depreciation – Amalgamation -Amalgamation scheme approved by High Court – All three conditions of s. 72A(2) cumulatively and required of rule 9C fulfilled – Intention behind merger ratified – AO rightly directed by CIT(A) to allow set off losses of amalgamating company in hands of the assessee. [S. 72A(2)]
The fact noted by the Tribunal are that GBDFC merged with the assessee-company with appointed date effective from 1st Jan., 2003 pursuant to the order of the High Court approving the scheme of amalgamation. The assessee had filed petition before the High Court seeking approval of the scheme of amalgamation of GBDFC only on 15th Jan., 2003, which is much later the date of slump sale of IP undertaking by GBDFC to AP. The Tribunal thus, held that the primary argument of the Departmental Representative that amalgamation process was already initiated prior to the date of slump sale on 1st Nov., 2002 is factually incorrect. Once the scheme of merger was duly approved by the High Court having in mind the larger public interest, the same cannot be disturbed by the Revenue by merely alleging that the merger was done only to buy losses and it was a colourable device. IT Department has not filed any objections before the High Court objecting to the merger. Hence, the Department cannot object to the same while implementing the order of merger. The fact that the High Court has accorded sanction to the scheme of amalgamation implies that the same has been done by considering the 'presentations from various fields and by duly considering the tax evasion point for income-tax purposes. Further, assessee has fulfilled all the three conditions stipulated in S. 72A(2) cumulatively and also the requirement stipulated in rule 9C. Assessee has duly specified the commercial rationale behind the merger of GBDFC i.e., complete revival of GBDFC. Said intention behind the merger stands ratified and strengthened by the subsequent act of the assessee by fully utilising the resources of GBDFC. Therefore, CIT(A) rightly directed the AO to allow set-off of losses of amalgamating company in the hands of the assessee. (AY. 2003-04)
Piramal Enterprises v. Addl. CIT (2022) 216 TTJ 802 (Mum)(Trib)

S. 73 : Losses in speculation business – Loss incurred on shares and derivatives could not be treated as speculation Loss- Gross total income comprised mainly of income from other sources much greater than income from business . [S.73 , Expln.]
Held that the composition of gross total income comprised mainly of income from other sources which was much more than income from business and that accordingly, the assessee's case fell under the exception clause provided in the Explanation to Section 73 of the Act. The loss incurred on shares and derivatives could not be treated as speculation loss.(AY. 2014-15)
Dy. CIT v. Quant Securities Pvt. Ltd. (2022) 98 ITR 83 (SN)(Mum) (Trib)

S. 74 : Losses - Capital gains – Carry forward and set off by non -Resident –Capital losses which have been brought forward from earlier years have to be carried forward to the subsequent years without setting off the same against the capital gains of the relevant assessment year - DTAA -India – Mauritius [S. 90, Art . 13(4)]
Held that the assessee having chosen the benefit of Indo -Mauritius DTAA in the relevant assessment year , the income from capital gains is not taxable in India as per Art 13(4) of the DTAA , therefore the Capital losses which have been brought forward from earlier years

have to be carried forward to the subsequent years without setting off the same against the capital gains of the relevant assessment year. (AY. 2016 -17)
ACIT v. J.P. Morgan India Investment Co . Mauritius Ltd. (2022) 220 TTJ 281 (Mum)(Trib)

S. 74 : Losses - Capital gains -Amalgamation - Carry forward and set off-Long-term capital loss of amalgamating company - The benefit of carry forward and set-off has to be allowed to the amalgamated company -.Section 72A applies only in respect of accumulated losses and unabsorbed depreciation under the head Profits and gains of business or profession. [S. 72A]
Held that the business of the amalgamating company under amalgamation continues uninterruptedly by the amalgamated company, the benefit of carry forward and set-off has to be allowed as per the mandate of S. 74 to the amalgamated company and, therefore, the long-term capital loss of the amalgamating company is available for set-off in the hands of the assessee- amalgamated company. S. 72A applies only in respect of accumulated losses and unabsorbed depreciation under the head "Profits and gains of business or profession. (AY. 2013-14)
Capgemini Technology Services India Ltd. v. Dy. CIT (2022) 220 TTJ 409 (Pune) (Trib)

S. 74 : Losses-Capital gains-Return filed within a specified time-Set-off of capital loss brought forward from the assessment year 2010-11 was to be allowed to assessee in the relevant assessment year. [S.80, 139(1)]
Held that as the assessee had filed a return for the assessment year 2010-11 within the time permitted under section 139(1) i.e., on 31-7-2011, set-off of capital loss brought forward from the assessment year 2010-11 was to be allowed to assessee in relevant assessment year (. AY. 2019-20)
Kantibhai Ugarbhai Patel. v. CIT NFAC (2022) 195 ITD 460 (Ahd) (Trib.)

S. 74 : Losses-Capital gains-Set off of brought forward long term capital loss against share premium account in balance sheet pursuant to Corporate debt restructuring-When there was no change in shareholding will not affect the claim of such set off under the Act. [S. 79]
Pursuant to Corporate Debt Restructuring and a scheme of arrangement, the Assessee set off its brought forward long term capital loss (LTCL) reflected in the financials for the year end against the share premium amount reflected in the books of accounts of the assessee. AO held that the assessee cannot carry forward its LTCL for the year after having set it off against the share premium amount since such LTCL no longer existed in the books of accounts. Held that corporate restructuring and consequent reduction in the accumulated losses by setting it off against share premium account in its books according to the provisions of Companies Act, 1956/ 2013 will not have any effect insofar as claim for set off of brought forward loss under the Act is made by the assessee. (AY. 2016-17)
Dy.CIT v. BPL Ltd. (2022) 94 ITR 66 (SN) (Bang) (Trib.)

S. 80 : Return for losses-Return of income within prescribed time-Audited financial statements could not be filed along with return of income as accounts were not audited

by that time-Denial of carry forward of business loss is not justified.[S. 44AB, 72, 139(9)]

Held that where assessee had filed its return of income within prescribed time, although audited financial statements could not be filed along with return of income as accounts were not audited by that time, there was no justification for denying carry forward of business loss for year under consideration based on non-filing of audited financial statements keeping in view applicable and relevant provisions of Act for computing such loss.Where assessee had not got its statutory audit under Companies Act done within prescribed time, or had not got its tax audit done under provisions of section 44AB, there were penal provisions provided under statute for non-compliances. Section 80 only stipulates that return of income is to be filed within prescribed time, which assessee had complied with. (AY. 2002-03)

DCIT v. Brahmos Aerospace (Thiruvananthapuram) Ltd. (2022) 194 ITD 561 (Cochin) (Trib.)

S. 80G : Donation-Renewal of approval-Question whether or not the income had been applied for charitable purpose cannot be looked while granting the renewal-Renewal of approval of the assessee-trust under section 80G of the Income-tax Act, 1961 was correct [S. 11, 12, 80G(5)(ii)]

Dismissing the appeal of the Revenue the Court held that only condition that requires to be fulfilled for the purposes of seeking renewal were as specified under section 80G(5)(ii) of the Income-tax Act, 1961 and the clauses narrated therein and that the questions whether or not renewal was justified, and whether or not the income of the assessee had been applied for charitable purposes were questions of fact to be gone into by the assessing authority at the time of assessing the income of the assessee and that the Tribunal was not right in law in holding that the assessee-trust was not eligible for renewal for approval under section 80G of the Act. (AY.2009-10)

DIT (E) v. D. R. Ranka Charitable Trust (2022) 447 ITR 766/ 220 DTR 141 / 329 CTR 690 / 289 Taxman 617 (SC)

Editorial: Decision of the Karnataka High Court affirmed. D. R. Ranka Charitable Trust v. DIT(E) (ITA No. 180 of 2010 dt 20-11-2018)

S. 80G : Donation - Charitable institution —No allegation that the Trust did not fulfil conditions required Under Section 80G(5)(vi) — Denial of approval is not valid . [S. 12AA , 80G(5)(vi)]

The Tribunal held that a plain reading of the objects of the trust did not indicate that the objects were of religious nature. The assessee-trust continued to enjoy the benefit of registration under section 12AA of the Act, and the Department had not initiated any action to cancel the registration. Even the Commissioner (E) had not doubted the charitable nature of the objects of the assessee-trust, and there was no averment or allegation that the assessee-trust did not fulfil the conditions as required under section 80G(5)(vi). Therefore, the Commissioner (E) was wrong in rejecting the assessee's application for approval. Further, the Commissioner (E)' observation that the assessee did not prefer any appeal against the earlier orders rejecting the approval also did not hold good as it was open to the assessee whether to file an appeal against the rejection of the application or to file a fresh application. (AY. 2019-20)

Gayatri Parivar Trust Bhoranj v. CIT (E) (2022)96 ITR 435 (Chd) (Trib)

S. 80G : Donation –Charitable objects – Expenses are less than the prescribed percentage - Directed to allow the approval. [S. 80G(5)(vi)]

On appreciation of the facts and the explanations substantiated by the cogent evidence and materials, the Hon'ble ITAT observed that the expenses incurred was not for the benefit of a specific community or any specific religion and the expenditure of religious nature not exceeding 5% of the total income.The order of the CIT (E) is *ex consequenti* overturned. The appeal of the assessee trust is allowed with a direction to grant the approval u/s 80G(5)(vi) of the Act

Shri Sant Zolebaba Sansthan Chikhali v. CIT (E) (2022) 215 DTR 229 / 220 TTJ 540 (Pune)(Trib.)

S. 80G : Donation-CSR expenses-Not allowable as deduction u/s. 37(1)-Denial of deduction u/s. 80G merely because donation forms part of CSR is held to be not valid [S. 37(1)]

Assessee had suo motu disallowed expenditure towards CSR responsibilities under section 37(1) and claimed deduction under section 80G in respect of donations paid to eligible charitable institutions. Assessing Officer denied deduction under section 80G on ground that granting deduction to an expenditure which was disallowable under section 37(1) would amount to giving an unintended benefit which was not envisaged under provisions of law. Tribunal held that the assessee could not be denied benefit of claim under Chapter VI-A, which was considered for computing 'Total, Taxable Income', merely because such payment forms part of CSR, as it would lead to double disallowance, which was not intention of Legislature. The Assessing Officer had not verified nature of payments qualifying exemption under section 80G and quantum of eligibility as per section 80G(1), Assessing Officer was directed to verify payments made by assessee towards CSR that also forms part of deduction under section 80G and then grant deduction claimed under section 80G in accordance with law. (AY. 2016-17)

Sling Media (P.) Ltd. v. DCIT (2022) 194 ITD 1 (Bang) (Trib.)

S. 80G : Donation-Expenses incurred under Corporate Social Responsibility Scheme under provisions of Companies Act are eligible for deduction u/s. 80G-Matter remanded.

Held that the expenses incurred under Corporate Social Responsibility Scheme under provisions of Companies Act are also eligible for deduction. Matter remanded. (AY. 2015-16)

Infinera India (P.) Ltd. v. JtCIT (2022) 194 ITD 463 (Bang) (Trib.)

S. 80G : Donation-Bona fide reason that challenging rejection of application under section 12A is sufficient to cover rejection of approval under section 80G as well, is a reasonable reason to condone delay in filing appeal challenging rejection of application under section 80G. [S. 12A]

Adjudicating the matter in favor of the assessee, the Hon'ble Tribunal held that where assessee-trust was denied registration under section 12A and approval under section 80G and it filed an application seeking condonation of delay in filing appeal against rejection of approval under section 80G on ground that it had already filed an appeal challenging rejection of registration under section 12A and assessee was under a bona fide belief that same would be suffice to cover rejection of approval under section 80G as well, same was a reasonable ground, thus, delay was to be condoned.

Artemis Education & Research Foundation v. CIT(E) (2022) 192 ITD 173/ 92 ITR 45/ 210 DTR 113/ 216 TTJ 58 (Delhi)(Trib)

S. 80GGC : Contribution - Any person - Political parties –Evidence not provided - Funds transferred to proprietor of firms and further transferred to other entities- Financial manoeuvre to legalize illicit money and to evade taxes- Disallowance is justified.

Held, that the assessee had not produced any additional evidence in support of its claim regarding the donation made under section 80GGC. The Assessing Officer on enquiry found a systematic financial manoeuvre to legitimate illicit moneys and evade taxes. In the absence of any evidence from the assessee, the findings given by the lower authorities did not require any interference. The disallowance was upheld. (AY. 2016-17)

Pavan Anil Bakeri v. Dy. CIT (2022)98 ITR 71 (SN) (Ahd) Trib)

S. 80GGC : Contribution-Political parties-Failure of donees to use it for object for which eligible-No disallowance can be made in the hands of donor.

Held that when the funds were given by assessee as donation to political parties and charitable Institutions (donees) under section 80GGC could not have been disallowed treating same as bogus on ground that donees failed to use it for object which had been eligible to receive donation. Act nowhere puts obligation upon donor to ensure how funds are utilized by donee towards their objects. (AY. 2012-13, 2014-15)

ACIT v. Armee Infotech. (2022) 193 ITD 728 (Ahd) (Trib.)

S. 80HHC : Export business-Unabsorbed losses to be taken into account before computing deduction.

Held that unabsorbed loss should be deducted to arrive at the profits for the purpose of calculation of deduction under section 80HHC of the Income-tax Act, 1961. Followed CIT v. Shirke Construction Equipment Ltd (2007) 291 ITR 380(SC)/ 14 SCC 787 *(*AY.1990-91)

Ashok Leyland Ltd. v. CIT (2022) 447 ITR 661 / 219 DTR 498/ 329 CTR 462 / (2023) 290 Taxman 120 (SC)

Editorial: CIT v. Ashok Leyland Ltd (2008) 297 ITR 107 (Mad)(HC), affirmed.

S. 80HHC : Export business-Turnover-Burden is on assessee to prove that royalty received from subsidiary company related to Export business-Royalty not to be included in turnover for computation deduction [S. 80HHC(4)]

Dismissing the appeal, that the Tribunal was right in holding that the royalty income received for providing know-how, secret formula manufacturing process and methods in respect of goods manufactured by the subsidiary and exported by the assessee was not eligible for deduction under section 80HHC and directing the Assessing Officer to exclude the royalty income for the purpose of calculation of deduction under section 80HHC. No material was produced by the assessee to prove that the royalty income received by the assessee from the subsidiary company was related to export business.(AY. 2004-05)

Fenner (India) Limited v.ACIT (2022) 446 ITR 241 (Mad)(HC)

S. 80HHC : Export business-Income earned from leasing of plant and machinery-Not export turnover-Not eligible for deduction. [S. 80HHC(2)(b)(i)]

Held that the income earned by the assessee from leasing its plant and machinery in the course of its business activity of leasing was in the nature of rent as contemplated under clause (baa) of the Explanation to section 80HHC. The appellate authorities had also considered that it was net of the lease income from plant and machinery and not the gross income which was to be considered while computing the deduction under section 80HHC in accordance with clause (baa) of the Explanation. The Department was not in appeal so far as 90 per cent. of income, from leasing plant and machinery, was to be taken into account for exclusion from profits of business. The assessee did not dispute that the reduction of its claim was on account of income earned by the assessee by leasing out the plant and machinery. The income earned by leasing plant and machinery was synonymous to the words rent or charges as contemplated in clause (baa) of the Explanation to section 80HHC. Order of Tribunal is affirmed. (AY.1995-96, 1997-98, 1998-99)

Goa Carbon Ltd. v.ACIT (2022) 440 ITR 257 (Bom) (HC)

S. 80HHC : Export business-More than one unit-Deduction to be computed unit wise.

Dismissing the appeal the Court held that section 80HHC of the Income-tax Act, 1961, contemplates three situations, viz., sub-section (3)(a) dealing with cases where the export is only of self-manufactured goods, sub-section (3)(b) dealing with cases where the export is only of trading goods, and sub-section (3)(c) dealing with cases where the export is of both self-manufactured goods as well as trading goods. Apart from this, the section nowhere deals with the situation of an assessee having more than one unit of business and one of the units being purely 100 per cent. export oriented unit and the other unit, a partially export unit. Even though the Act does not provide for dealing with such a situation, yet, being a beneficial provision, in the fitness of things, the assessee is entitled to the relief in respect of 100 per cent. export oriented unit. (AY.2002-03)

CIT v. Ayshwarya Sea Food Pvt. Ltd. (2022)441 ITR 171 (Mad)(HC)

S. 80HHC : Export business –Book profit - Eligible for entire deduction on export [S. 115JB Expln. (iv).]

Held, that the assessee was eligible for deduction of 100 per cent of the export profits as computed under section 80HHC while computing the book profits in terms of clause (iv) of the Explanation to section 115JB of the Act. (AY. 2003 -04 ,2006 -07 to 2008 -09)

Jindal Steel and Power Ltd v. Add. CIT (2022)97 ITR 516 (Delhi) (Trib)

S. 80I : Industrial undertakings-Income derived-Interest received from customers for delay in payment of sale consideration-Entitle to exemption.

Allowing the appeal of the assessee the Court held that interest received on delayed payments for the goods sold is profits and gains from business hence entitle to exemption.(ITA No. 793 of 2006 dt. 26-9-2022 (AY. 1997-98)

Kanakadurga Agro Oil Prodcuts Ltd v. ACIT (2022) The Chamber's Journal-December-P. 86 (AP)(HC)

S. 80IA: Industrial undertakings-Interest-Generation of power-Interest income earned from advance given to employees during the course of business and also interest income earned from bonds issued by the sole customer to whom electricity is supplied is eligible for deduction. [S. 80IA(4)(iv)]

The assessee being an enterprise of the Government of Orissa is engaged solely in the business of generation of power. The power so generated is sold exclusively to Grid Corporation of Orissa Ltd. ('GRIDCO'). The assessee earned interest income from advances given to the employees during the course of its business. Also, late payment for electricity supplied was sought to be made up be GRIDCO by issuing bonds on which the assessee earned interest income. The assessee claimed deduction u/s. 80IA on both these interest incomes earned by it which claim was not granted by the lower authorities. On appeal to the High Court, it was held that:

Interest received from advances given to its employees are receipts in normal course of carrying out its business and ought to considered as income derived from its essential business activities. Similarly, the late payment form GRIDCO for the electricity supplies, is sought to be made by GRIDCO by issuing bonds on which the interest income earned by assessee also has a direct nexus with the essential business of the assessee which is generation of power and thus, ought to be included while computing profits derived from eligible business for the purpose of claiming deduction u/s. 80IA. (AY. 2002-03, 2003-04, 2007-08 to 2009-10)

Odisha Power Generation Corporation Ltd. v. ACIT (2022) 215 DTR 73 / 327 CTR 440 (Orissa HC)

S. 80IA :Industrial undertakings-Infrastructure development-Interest income from employees on advances-Equipment hire charges-Ammonia tank wagon hire charges-Cane hire charges-Interest income from banks and financial institutions-Interest on deposits-Not derived from industrial undertaking-Not eligible for deduction [S.28(i), 32AB, 56]

Assessee is a co-operative society, engaged in business ofmanufacturing of urea and ammonia.It had earned interest income from employees on advances, equipment hire charges, ammonia tank wagon hire charges, cane hire charges, interest income from banks and financial institutions,interest on deposit maintained under section 32AB with development bank. It claimed said income as deduction under section 80-IA. The Assessing Officer disallowed the claim. Order of the Assessing Officer was affirmed by the Tribunal. On appeal, the High Court held that since the income earned was not derived from industrial undertaking, the assessee is not eligible for deduction under section 80IA of the Act. (AY. 1996-97)

Krishak Bharati Cooperative Ltd.v.JCIT *(*2022) 142 taxmmann.com 331 (Delhi)(HC)
Editorial: SLP of assessee dismissed, Krishak Bharati Cooperative Ltd.v.JCIT *(*2022) 289 Taxman 75 (SC)

S. 80IA :Industrial undertakings-Infrastructure development-On facts held to be not allowable-No substantial question of law.[S.260A]

Held that on remand of the issue of deduction under section 80-IA by the Tribunal, the Assessing Officer had reiterated the stand taken earlier and it was answered against the assessee. The assessee had no case that the matter had been taken up any further and hence it had attained finality. No question of law arose in respect of this issue.(AY.1999-2000)

CIT v. Apollo Tyres Ltd. (No. 1) (2022)447 ITR 377 (Ker)(HC)

S. 80IA :Industrial undertakings-Power generation units I and II constituted an undertaking-Entitled to deduction.

Held that the Tribunal was right in holding that the assessee's power generation units I and II constituted an "undertaking" under section 80-IA and were entitled to deduction thereunder.(AY.2003-04)

CIT v. Apollo Tyres Ltd. (No. 2) (2022)447 ITR 391 (Ker)(HC)
CIT v. Apollo Tyres Ltd. (No. 3) (2022)447 ITR 393 (Ker)(HC)

S. 80IA :Industrial undertaking-Infrastructure development-Bangalore International Air Port (BIAL) is a statutory body-Cargo handling services to BIAL on Built Operate and Transfer(BOT) basis-Service Provider Right Holder (SPRH) agreement would fall within expression 'infrastructure facility' under section 80IA(4)-Entitle to deduction [S.80IA(4)]

Assessee-company was engaged in business of providing cargo handling services at Bengaluru International Airport Limited, 'BIAL'. It had developed cargo handling services under Built, Operate and Transfer (BOT) scheme entered into with BIAL under Service Provider Right Holder (SPRH) agreement which gave assessee right to design, construction, financing, testing, maintenance, management and operation for period of 20 years. Assessee claimed deduction under section 80IA(4). Assessing Officer disallowed assessee's claim on ground that assessee had entered into an agreement with BIAL which was not a statutory body and cargo handling facility did not form part of airport and did not fall within meaning of expression 'infrastructure facility'. On appeal, the Commissioner (Appeals) allowed assessee's claim holding that the BIAL is a statutory body and the cargo handling facility formed part of airport and was covered within the expression 'infrastructure facility'. The Tribunal upheld order of the Commissioner (Appeals). On appeal, the Court held that in view of decision in Flamingo Dutyfree Shops (P.) Ltd. v. UOI [W.P. No. 14215 of 2008, dated 19-12-2008] BIAL was a statutory body and, thus, assessee had complied with condition of entering into an agreement with statutory body hence entitled to deduction under section 80IA(4) of the Act. (AY. 2014-15)

PCIT v. Menzies Aviation Bobba (Bangalore) (P) Ltd(2021) 133 taxmann.com 458(Karn)(HC)

Editorial: Notice issued in SLP filed by Revenue; PCIT v. Menzies Aviation Bobba (Bangalore) (P) Ltd. (2022) 287 Taxman 179/113 CCH 353 (SC)

S. 80IA :Industrial undertaking-Infrastructure development-Electricity distribution-Expenditure on network of a new transmission or distribution line-No requirement of capitalization of said expenditure in books of account-Deduction allowable [S.800IA(4)(iv)]

The assessee, a power distribution company, had incurred expenditure on network of a new transmission or distribution line. Allowing the appeal of the assessee the Court held that there was no requirement of capitalization of said expenditure in books of account so as to claim deduction under section 80-IA(4)(iv) pf the Act. Followed Bangalore Electricity Supply Company Ltd. v. Dy. CIT (20021) 431 ITR 606 (Karn)(HC) (AY. 2006-07)

Mangalore Electricity Supply Company Ltd. v. Dy.CIT (2022) 136 taxmann.com 428 (Karn.)(HC)

Editorial : Notice issued in SLP filed against the order of High Court, Dy. CIT v. Mangalore Electricity Supply Company Ltd. (2022) 286 Taxman 566 (SC)

S. 80IA :Industrial undertaking-Infrastructure development-Operation and maintenance of Multi-Purpose berth in Port-Letter issued and agreement with Port authorities would satisfy requirement of law. [S. 119]

Dismissing the appeal, the Court held that the letter from the port authorities and the agreement which were produced by the assessee were to be treated as a certificate issued by the port authorities and would satisfy the requirement in Circular No. 10 of 2005, dated December 16, 2005 ([2006] 280 ITR (St.) 1) issued by the Central Board of Direct Taxes. The Tribunal had rightly rejected the Department's appeal and confirmed the order passed by the Commissioner (Appeals) allowing deduction under section 80IA to the assessee.(AY.2004-05, 2005-06)

PCIT v. T. M. International Logistic Ltd. (2022)442 ITR 87 / 211 DTR 281/ 325 CTR 462/ 286 Taxman 101 (Cal) (HC)

S. 80IA :Industrial undertaking-Eligible business-Deduction to be computed unit-wise and not business as a whole-Manufacture-Processing and marketing of seeds-Raw seeds undergoing various processes-Amounts to manufacture or production of articles or things [S. 80IA(2), 80IA(5), 80IA(7)]

Court held that the scope of deduction under section 80-IA of the Act was limited to determination of the quantum of deduction treating the eligible business as the only source of income. The deduction could not be denied because the deduction under section 80-IA had to be computed unit-wise and not for the business as a whole. The Tribunal was justified in allowing the deduction under section 80-IA even though the assessee had declared loss under the head profits and gains of business. Dismissing the appeal, the Court held that the raw seeds which could be the subject matter of human consumption, after undergoing the various process stages, ceased to be edible and could only be used for cultivation. Even applying the commercial test, the Tribunal, on the facts, had found that in the market, the final output was known to be used only for cultivation. The Tribunal was right in coming to the conclusion that a different commodity emerged after the raw seeds underwent the different stages of processing. The Assessing Officer was wrong in holding that the activity carried on by the

assessee in its industrial undertakings did not amount to manufacture or production of articles or things. Followed CIT v. Jalna Seeds Processing and Refrigeration Co..Ltd (2000)0 246 ITR 156 (Bom) (HC). (AY. 1996-97)

CIT v. Maharashtra Hybrid Seeds Co. Ltd. (2022) 440 ITR 75 / 212 DTR 84/ 328 CTR 676 (Bom) (HC)

S. 80IA : Industrial undertakings – Infrastructure development- Failure to file Form No 10CCB - Disallowance is justified.

Held, that since no details were produced before the Tribunal, there was no infirmity in the order of the Commissioner (Appeals) confirming the disallowance under section 80-IA of the Act for failure to file Form No 10CCB . (AY.2007-08, 2010-11 to 2014-15).

Dy. CIT v. Wind World India Ltd. (2022)98 ITR 22 (Mum)(Trib)

S. 80IA : Industrial undertakings – Infrastructure development-Abnormal profits – Eligible for deduction. [S.10B(7), 80IA(7), 115JB]

Held, that the Assessing Officer had not brought out why the profits of the assessee would not be considered ordinary profits in the course of business. The Assessing Officer had not demonstrated any proof of arrangement for disallowance under the provisions of section 10B(7) read with section 80-IA(10) of the Act. It is mandatory for the Revenue to prove that there was some special arrangement between the assessee and its associated enterprise to earn extra profits and this burden had not been discharged by the Department. Therefore, there was no reason to interfere with the findings of the Commissioner (Appeals) and the relief provided to the assessee was sustained.(AY.2011-12)

Dy. CIT v. Halliburton Technology Industries Pvt. Ltd. (2022) 99 ITR 699 (Pune) (Trib)

S. 80IA: Industrial undertakings – Infrastructure development- Fair market value-Price sold by State Electricity Board to consumers- Not at which the price is supplied by assessee to State Electricity Board[S. 80IA(8)]

It was held that the inter division of transfer of power from power plants was to be made at the price at which power was sold by the State Electricity Board to the assessee since that price was the fair market value of power in conformity with the provisions of sub-section (8) of section 80-IA of the Act. (AY. 2003 -04 ,2006 -07 to 2008 -09)

Jindal Steel and Power Ltd v. Add. CIT (2022)97 ITR 516 (Delhi) (Trib)

S. 80IA :Industrial undertaking-Infrastructure development-Partnership firm-Executed works contract-Not eligible for deduction [S. 800IA(4), 80IA(13)]

Assessee is a contractor for Indian Railways and carried on work of construction of rail over bridges, foot over bridges, construction of new railway station buildings, etc.. Assessing Officer denied claim of deduction under section 80IA(4) on ground that only enterprises which are engaged in activity of development, operating and maintaining or developing, operating and maintaining any infrastructure facility are eligible for deduction under section 80IA of the Act. Commissioner (Appeals) allowed appeal. On appeal by revenue, the

Tribunal held that for claiming deduction under section 80IA(4) the assessee has to satisfy all conditions mentioned in sub-section 4(i)(a)/(b)/(c) of the Act. On the facts the assessee is only a partnership firm, i.e., it was not a creation of statute, but was a body of individuals regulated by statute, namely, Partnership Act, hence, it failed to satisfy applicability clause under section 80IA(4)(i) further the assessee was found to have executed works contract attracting Explanation to sub-section (13) of section 80-IA. Accordingly the appeal of Revenue was allowed. (AY. 2009-10, 2011-12)

DCIT v. Eshwarnath Construction. (2022) 194 ITD 592 (Chennai) (Trib)

S. 80IA: Industrial undertaking-Infrastructure development-Miscellaneous receipts from the sale of scrap-Eligible for deduction.-Block of assets-Insurance claims-Capitalized-Deduction not available.[S. 2(11)]

The metal crash barriers, pedestrian guard rails, etc., got damaged due to road accidents and other regular wear and tear needed to be replaced. The assessee claims that the scrap has been generated in the regular course of business of operation and maintenance of the toll highway. Thus, a part of a normal business transaction is eligible for deduction u/s 80IA. The AO has treated the income from the sale of scrap and insurance receipts received by the assessee as "income from other sources". Consequently, it has not allowed deduction u/s 80IA of the Act. The Tribunal noted that the deductions had been allowed in the earlier year, wherein it was held that the sale of scrap was generated in the ordinary course of business and it was not a case of independent purchase and sale of scrap items, and it is a case where such scrap items were generated from the same business on which deduction u/s 80IA is claimed. The assessee claimed that the insurance receipts are towards a claim made in respect of assets used in the toll operation activity which got damaged, and such receipts are incidental to its activity of maintaining and operating the highway. The Tribunal noted that the insurance claims regarding assets used in the toll operations were capitalized and form part of the block of assets. The receipts arising from insurance claims will reduce the block of assets instead of being eligible for deduction under section 80IA of the Act. (AY. 2010-11)

GVK Jaipur Expressway (P) Ltd. v. Dy.CIT (2022) 216 TTJ 540 (Jaipur)(Trib)

S. 80IA :Industrial undertaking-Infrastructure development-Initial assessment Year-Option to choose with assessee--Deduction to be computed without setting off unabsorbed Depreciation-Windmill-Expenditure were incurred for effective functioning of Windmills-Depreciation allowable [S. 32, 80IA(2)]

Held, that it was the option of the assessee to choose the initial assessment year under the provisions of section 80IA(2) of the Act beginning from the year in which commercial production began. Tribunal also held that the assessee was eligible for deduction under section 80IA of the Act without setting off or adjusting the unabsorbed depreciation of earlier years.(AY.2014-15)

ACIT v. Kalthia Engineering and Construction Ltd. (2022)93 ITR 30 (SN) (Ahd) (Trib)

S. 80IA :Industrial undertaking-Infrastructure development-loss of one eligible unit is not to be adjusted or set off against profit of another eligible unit-Captive power plant-Market value of power supplied by assessee to steel division should be computed considering rate of power charged by Chhattisgarh State Electricity Board for supply of electricity to industrial consumers.

Held that while computing deduction under section 80-IA, loss of one eligible unit is not to be adjusted or set off against profit of another eligible unit. Tribunal also held that the Assessee had established a captive power plant in State of Chhattisgarh to supply electricity to its steel division, for purpose of section 80-IA deduction, market value of power supplied by assessee to steel division should be computed considering rate of power charged by Chhattisgarh State Electricity Board for supply of electricity to industrial consumers. (AY. 2011-12)

DCIT v. Godawari Power & Ispat Ltd. (2022) 193 ITD 869 (Raipur) (Trib.)

S. 80IB: Industrial undertaking-Manufacture of article falling under Eleventh Schedule-Polyurethane foam-Manufacturing polyurethane foam and supplying it in different sizes and designs to assembly operator for use ultimately for car seats-Not entitled to deduction [S.80IB(2)(iii), Sch. XI, Entry 25.]

Dismissing the appeal, the Court held that the assessee manufactured polyurethane foam and supplied it in different sizes and designs to the assembly operator, and it was ultimately used for car seats. The assessee did not undertake any further process for the end product, namely, car seats. The polyurethane foam supplied in different designs and sizes was used as ingredient by others, namely, assembly operators for the car seats. Merely because the assessee used the chemicals and ultimately what was manufactured was polyurethane foam and that was used by assembly operators after the process of moulding as car seats, it could not be said that the end product manufactured by the assessee was car seats or automobile seats. There must be a further process undertaken by the very assessee in manufacture of the car seats. When the article manufactured by the assessee, namely, polyurethane foam, was an article classifiable in the Eleventh Schedule (entry 25), considering section 80-IB(2)(iii). The assessee is not entitle to deduction.(AY.2003-04)

Polyflex (India) Pvt. Ltd. v.CIT (2022)449 ITR 244/ 219 DTR 521 / 329 CTR 587 / (2023) 290 Taxman 366 (SC)

Editorial: CIT v. Polyflex (India) Pvt. Ltd (2014) 363 ITR 224(Karn)(HC), affirmed.

S. 80IB: Industrial undertaking-Manufacture-Poultry feed-steam cooking-Process undertaken in producing poultry feed would amount to manufacture-Entitled for deduction [800IB(5)]

Held that manufacturing process adopted by assessee involved steam cooking which was done after materials were mixed,thereafter, there were two other conditioning processes. After conditioning product goes in pelleting section, then to sieving section and after passing quality control test, it was ready for bagging. Accordingly the process undertaken by assessee in producing poultry feed would amount to manufacture. Order of Tribunal affirmed. AY. 2011-12, to 2013-14))

PCIT v. Shalimar Pellet Feeds Ltd. (2022) 287 Taxman 134/ 213 DTR 345/ 326 CTR 595 (Cal.)(HC)

S. 80IB : Industrial undertakings -Subsidy - Profits derived from business — Subsidies given by Government to enable sale to Farmers at , or below, maximum retail price — Form part of business profits — Subsidy eligible for deduction. [S. 2(24)(xvii), 148]

The Tribunal held that the facts showed that fertilisers produced by the assessee were under the retention-pricing scheme whereby manufacturers were paid the subsidy to enable them to sell the fertilisers at, or below, the indicated maximum retail price to farmers. The subsidies were, hence, income derived from the business of the eligible industrial undertaking. Therefore, the assessee, as an industrial undertaking, was eligible for the deduction under section 80-IB on the fertiliser subsidy received by it. (AY.2003-04)

TATA Chemicals Ltd. v. Dy. CIT (2022)95 ITR 134/ 216 TTJ 402 (Mum)(Trib)

S. 80IB: Industrial undertaking-Form No 10CCB was uploaded on receipt of intimation-Assessing Officer is directed to allow the rectification applied by the assessee and allow the claim. [S. 143(1), 154]

The assessee has not filed the Form No 10CCB along with the return.CPC rejected the claim u/s 80IB of the Act and intimation was passed u/s 143(1) of the Act. The Assessee uploaded the Form No 10CCB after receipt of intimation u/s 143(1) of the Act. The assessee also moved an application u/s 154 of the Act to allow the claim u/s 80IB of the Act. The application was rejected by the Assessing Officer and which was affirmed by the CIT(A). On appeal, the Tribunal directed the Assessing Officer to allow the claim u/s 80IB of the Act. Tribunal referred the Circular of CBDT No 689 1994 dt. 24-8-1994 (1994) ITR 75 (St) AY.2017-18, 2018-19)

Satish Cold Storage v. Dy.CIT (2022) 197 ITD 41 / 97 ITR 601 (Lucknow)(Trib)

S. 80IB: Industrial undertaking-Fertilizer subsidy-income derived from the business-Eligible for deduction. [S. 28(i)]

Fertilizers produced by the appellant are under the retention-pricing scheme, wherein the government decides the maximum retail price, and the difference between selling price less than the maximum retail price is paid to the appellant. The Tribunal noted that the difference was the cost recovered from the government, which is directly related to the sale of fertilizer to the farmers. It is a subsidy to the manufacturers to sell the fertilizers at or below the indicated maximum retail price to the farmers. Following the decision of the Supreme Court in the case of CIT v. Meghalaya Steels Ltd (2016)383 ITR 279 (SC) it noted that various types of subsidies received by the manufacturer are eligible for deduction under section 80IB. Hence, the Fertilizer subsidy received under the scheme will also be income derived from the business eligible for claim under section 80IB. (AY. 2003-04)

Tata Chemicals Ltd. v. Dy.CIT (2022) 216 TTJ 402 /95 ITR 134 (Mum) (Trib)

S. 80IB(7) : Hotel business - Return – Failure to file return within due date – Not eligible deduction- Directed to decide as per direction of the CBDT . [S.10A, 80AC, 119(2B) 139(1)]

The Tribunal held that the provisions under section 80AC of the Act requiring the assessee to furnish return of income before the due date specified under section 139(1) of the Act are

mandatory and not directory. Therefore, the assessee was not eligible for deduction under section 80-IB(7) of the Act. Tribunal directed the Assessing Officer to decide the issue as per direction of the CBDT under section 119(2B) of the Act .
Hyagreeva Hotels and Resorts Pvt. Ltd v. Dy. CIT (2022)97 ITR 70 (SN.) (Bang) (Trib)

S. 80IB(10) : Housing projects-Transactions entered into with buyers of flats before introduction of clauses (e) and (f) of section 80IB(10)-Eligible for deduction-Amendment with effect from April 1, 2010 has no application for AY. 2010-11.
High Court answered against the Department the question whether the Tribunal was right in holding that transactions entered into with buyers of flats before the introduction of clauses (e) and (f) of section 80-IB(10) of the Income-tax Act, 1961, were eligible for deduction, on a petition for special leave to appeal, dismissing the petition the Court held that the amendment to section 80-IB(10) by the insertion of clauses (e) and (f) with effect from April 1, 2010 had no application for the AY. 2010-11 corresponding to financial year 2009-10. Since the AY. in the present case was 2010-11, the petition under article 136 of the Constitution was not to be entertained, although special leave had been granted for the following year.(AY. 2010-11)

CIT. v. Mandavi Builders (2022)443 ITR 235 / 284 Taxman 371 (SC)

S. 80IB(10) : Housing projects-Developer –SRA project-Ownership of land is not requirement of the statute-Entitle to deduction-Revision was held to be not valid [S. 263]

Dismissing the appeal of the Revenue, the Court held that the assessee cannot be considered as a mere contractor simply for the reasons that the land was conveyed to SRA, since assessee has taken up the entire responsibility to construct the tenements along with infrastructural facilities and the building so constructed has been handed over to SRA. The court referred to the judgement of Hon'ble Gujarat High Court in CIT v. Radhe Developers(2012) 341 ITR 403 (Guj)(HC) where Gujarat High Court has rejected the argument of Revenue that in order to receive benefit under Section 80IB(10) of the Act requirement of ownership of the land must be read into the statute. Referred CIT v. Abode Builders (ITA No. 2020 of 2017 dt 16-2-2022) For the AY. 2006-07 revision order was quashed. (TXA No.945 of 2017/ TXA No.470 of 2017 dt 3-3-2022) (AY 2006-07, 2007-08.)

PCIT v. Vishnu Enterprises (Bom)(HC)(UR)

S. 80IB(10) : Housing projects-Owner or developer-Commencement of development of residential project-Date of approval-Ownership of land-Joint venture-The project for which permission was granted on 24 th July 2002 was not the same as that for which the ID lapsed in 2001-Eligible to deduction.

The AO has rejected the claim of the assessee on the ground that the assessee was not owner of the land and BMC has given sanction to plan through letter dt. 21 st September, 1996 hence the date of initial approval would be the operative date of approval. On appeal, the

CIT(A) allowed the claim of the assessee which was affirmed by the Tribunal. On appeal, the Revenue contended that the assessee is not eligible for exemption on three points (a) Lack of ownership of land on which the project was constructed (b) assessee has not invested in the construction activity or done construction could not be considered as a developer (c) Project was approved and commenced before the stipulated date 1st October 1998. Dismissing the appeal of the Revenue, the Court held that the Commencement certificate (CC) is in the name of assessee tax related to land was paid by assessee from 1998 onwards. The Court held that the date of final approval would be the operative date of approval. The project completed was different project for which initial approval was granted. The original lay-out plan became invalid after 7 th January 2001. The Assessee has applied for IOD for the second time on 22 November 2021 and was granted permission on 21 st July 2002. The project for which permission was granted on 24 th July 2002 was not the same as that for which the ID lapsed in 2001. Accordingly, the order of Tribunal was affirmed. Referred CIT v. Radhe Developers (2022) 341 ITR 403 (Guj)(HC) (AY. 2005-6)

CIT v. Abode Builders (2022) 448 ITR 262 / 213 DTR 251/ 326 CTR 631(Bom)(HC)

S. 80IB(10) : Housing projects-Two flats in excess of the prescribed limit of 1500 sq.ft-Pro rata deduction in respect of eligible flats not exceeding prescribed limit is eligible-Interpretation of taxing Statutes-When the language of a statute is unambiguous and admits of only one meaning, no question of construction of a statute then arises.[S. 260A]

The assessee firm engaged in the business of developing residential projects.In return,the assessee claimed deduction u/s 80IB(10) of the Act. The Assessing Officer held that two flats were having an area in excess of the prescribed limit of 1500 sq. ft hence denied the deduction. On appeal, the CIT(A) directed to allow the pro rata deduction in respect of eligible flats not exceeding prescribed limit of a covered area of 1500 sq.ft. On appeal by Revenue, the Tribunal affirmed the order of the CIT(A). On appeal to High Court by the Revenue, High Court affirmed the order of the Tribunal. Court relying on NelsonMotis v.UOI AIR 1992 SC 1981 held that it is well settled principle of interpretation of statues that when the language of a statute is unambiguous and admits of only one meaning, no question of construction of a statute then arises. (AY. 2011-12)

PCIT v. Kumar Builders Consortium (2022) 444 ITR 44 / (2023) 290 Taxman 277 (Bom)(HC)

S. 80IB(10) : Housing projects-Proportionate deduction-matter remanded to the Assessing Officer to adjudicate as to when flats in question were allotted and then to decide claim of assessee.

Assessing Officer disallowed proportionate deduction under section 80IB(10) in respect of two flats which were allotted to partners of assessee thereby contravening clauses (e) and (f) of section 80-IB(10). Assessee submitted that clauses (e) and (f) of section 80-IB(10) have a

prospective effect and do not apply to fact situation of cases as flats in question were allotted on 25-5-2009 and registered on 12-8-2010. Revenue however submitted that flats were allotted after 1-4-2010 i.e., 12-8-2010. On appeal the High Court held that Circular No 5/ 2020 dt 3-6-2010 it was clarified that clauses (e) and (f) will have prospective operation and applicable from 1-4-2010 and in case flats in question had been allotted subsequent to 1-4-2010, i.e., on 12-8-2010, assessee shall not be entitled to benefit of deduction under section 80-IB(10). High Court held that factual issue required factual adjudication, hence, matter was to be remitted to Assessing Officer to adjudicate as to when flats in question were allotted and then to decide claim of assessee for deduction under section 80-IB(10). (AY. 2011-12)

Mandavi Builders v. Dy.CIT (2022) 135 taxmann.com 119 (Karn) (HC)
Editorial : SLP is granted to the revenue; DCIT v. Mandavi Builders. (2022) 285 Taxman 365 (SC)

S. 80IB(10) : Housing projects-Amendment brought on 1-4-2020 vide clauses (e) and (f) to section 80IB(10) is prospective in nature-Unaccounted money found in the course of search-Deduction u/s 80IB(10) cannot be denied.

Dismissing the appeal of the revenue, the Court held that housing project which took place in 2007-08, the amendment brought on 1-4-2020 vide clauses (e) and (f) to section 80IB(10) is prospective in nature. Court also held that the unaccounted money found in the course of search,deduction u/s 80IB(10) cannot be denied. (AY. 2010-11)
Mandavi Builders v. Dy.CIT (2021) 133 taxmann.com 413 (Karn) (HC)
Editorial : SLP is granted to the revenue; DCIT v. Mandavi Builders. (2022) 285 Taxman 4 (SC)

S. 80IB(10) : Housing projects-Total area exceeded 1500 sq.ft-Not entitle to deduction. [S.80IB(10)(c)]

Dismissing the appeal, the Court held that since total area of residential unit comprised of servant room and flat sold by assessee had exceeded limit of 1500 sq.ft., resulting in violation of provisions of section 80-IB(10)(c), assessee was not eligible for deduction under section 80-IB(10) of the Act. Order of Tribunal is affirmed.(AY. 2019-10)
South City Projects (Kolkata) Ltd. v. PCIT (2022) 285 Taxman 696 (Cal) (HC)

S. 80IB(10) : Housing projects-Interest on fixed deposits-Derived from business-No other source of income-Deduction allowable.[S. 2(13), 56, 80IA]
Dismissing the appeal of the revenue, the Court held that interest earned from fixed deposit which were made out of business income of the assessee and the assessee had no other source of income. Order of Tribunal allowing the claim is affirmed. Referred CIT v. Calcutta National Bank Ltd (1959) 37 ITR 171 (SC). (AY. 2009-10)
PCIT v. West Bengal Hosing Board (2022) 285 Taxman 32 (Cal)(HC)

S. 80IB(10) : Housing projects-Completion certificate for seven buildings-Plan for eight building was revised-Entitle to deduction for seven buildings [S. 260A]

The Assessing Officer disallowed the claim u/s 80IB(10) on ground that completion certificate of housing project issued did not show building G, thus, it was a part completion certificate and, accordingly, assessee was not entitled to deduction under section 80-IB(10). On appeal the CIT(A) allowed the claim. Tribunal affirmed the order of the CIT(A). On appeal by the revenue dismissing the appeal the court held that the building 'G' was to be considered as a separate project and it was not a part and parcel of original housing project as its plan was approved much later. Order of Tribunal allowing the claim was approved. (AY. 2008-09)

PCIT v. Prathamesh Constructions (2022) 285 Taxman 287/ 324 CTR 542 / 209 DTR 363 (Bom) (HC)

S. 80IB(10) : Housing projects-Built-up area--Some units of project conforming to condition-Proportionate deduction allowable.

Dismissing the appeal of the revenue, the Court held that the Tribunal was justified in allowing proportionate deduction under section 80-IB(10) to the extent of profits attributable to the units of the project where the built up area was below 1500 sq. ft.(AY.2013-14)

PCIT. v S. N. Builders and Developers (2022) 440 ITR 351 (Karn) (HC)

S. 80IB(10) : Housing projects-Built up area-Proportionate deduction allowable-Project completion method-Entitle deduction on the basis of project completion method adopted by the assessee. [S. 145]

Dismissing the appeal of the revenue, the Court held that the assessee was justified in claiming the deduction on the basis of project completion method. Court also held that the Tribunal was justified in allowing the deduction on proportionate basis. (AY.2006-07)

CIT v. Varun Developers (2022) 440 ITR 354 / 286 Taxman 396 (Karn)(HC)

S. 80IB(10) : Housing projects-Denial of exemption on the ground that in the revised return the claim was withdrawn-Denial of exemption on hyper technicalities is held to be unjustified-Matter remanded to the Assessing Officer. [S.80AC]

Allowing the appeal, the Court held that the document placed before the court said to be the revised return would indicate that the deductions under Chapter VI-A were claimed by the assessee. The orders of the Assessing Officer and the appellate authorities were to be set aside and the matter remanded to the Assessing Officer to re-examine the deduction claimed by the assessee with respect to the revised return in view of the provisions of section 80AC of the Act. (AY.2006-07)

Hinduja Land Developments (P.) Ltd. v. ACIT (2022) 440 ITR 135 / 284 Taxman 662 / 213 DTR 164/ 326 CTR 464 (Karn) (HC)

S. 80IB (10): Housing projects-Commercial space-Developer - Provision application prospectively- Completion of project before specified time- Proof not produced before lower authority- Matter remanded .

Held, that restriction in the extent of commercial space in a housing project imposed by way of amendment to section 80IB(10) did not apply to housing projects approved before April 1, 2005 even though completed after that date. Since the assessee's housing project was admittedly approved before April 1 2005, the Revenue's allegation did not apply to the assessee. Further, to show completion of the project before March 31, 2008, the assessee had produced evidence. As these documents were not produced before the lower authorities, but only before the Tribunal, it was proper to restore the issue to the file of the Assessing Officer for fresh adjudication. The assessee had been held a developer in the initial years of claim, that is, in the assessment years 2003-04 and 2004-05. The matter was not open for re-examination in subsequent years in the absence of any change in the factual position. (AY. 2005-06, 2006-07)

Dy. CIT v. Sahara India Sahkari Awas Samiti Ltd. (2022)98 ITR 634 (Delhi) (Trib)

S. 80IB(10) : Housing projects- Earlier order of CIT(A) was accepted – Matter remanded .

Held, that similar disallowances were made for the assessment year 2011-12 and the assessee had not challenged these additions and has accepted the disallowances. The Department contended that the Commissioner (Appeals) had merely followed the order for the preceding year without going into the merits of the facts that the assessee itself had accepted the disallowances..The Assessing Officer was directed to check afresh the admissibilty of the deduction claimed by the assessee under section 80-IB of the Act. The Assessing Officer was to apply his mind afresh looking to the various aspects argued by the Department.(AY.2013-14)

Dy. CIT v. Joy Syndicate And Enclave Pvt. Ltd. (2022)99 ITR 49 (SN)(Jaipur) (Trib)

S. 80IB(10) : Housing projects- Builder and developer - Approval by local authority on 30 -3 2013 – Completion certificate on 30 -3 -2013 – Not eligible for deduction .

A housing project developed by the assessee b was approved by competent authority vide order dated 30-3-2007. Completion certificate was issued by competent authority on 30-3-2013 . Assessee claimed deduction under section 80IB(10) of the Act . The Assessing Officer held that assessee contravened provisions of section 80-IB(10) inasmuch as project was not completed within 5 years from end of financial year in which housing project was approved. . On appeal the Assessee contended that though completion certificate was issued on this date but project was actually completed on 7-3-2012 and a letter in that regard was also issued . CIT(A) held that order dtd.30-2-2007 was granted subject to compliance on certain conditions and a condition made obligatory for the assessee to get demarcation of the land from the District Inspector Land Record (DILR) before commencement of the development work, which actually happened on 22-8-2007. This date being within a period of five years from the end of the financial year in which the housing project was approved, the assessee was eligible for deduction..On appeal by the Revenue the Tribunal held that the project was not fully complete, therefore, alleged letter of 7-3-2012 was to be treated as farce, whose even furnishing to competent authority was unproved . Tribunal held that since housing project was approved on 30-3-2007 and a period of five years from end of financial year in which housing project was approved ended on 31-3-2012, condition of completing

construction within a period of five years from end of financial year in which housing project was approved got vitiated, thus, assessee was ineligible for claiming deduction under section 80-IB(10) of the Act . (AY. 2013-14)

ACIT v. Vijay Tukaram Raundal (2022) 219 TTJ 641 /218 DTR 129 / (2023) 147 taxmann.com 53 (Pune)(Trib)

S. 80IB(10) : Housing projects- Revised return- Survey - Deduction made in original return withdrawn in revised return- No evidence to claim that deduction withdrawn due to pressure of Assessing Officer during survey-Plea to direct CIT (A) to allow deduction not sustainable.[S. 80A(5),133A, 139(1)].

The Tribunal held that the claim had not undergone the process of assessment by the Assessing Officer, and could not be allowed by the Commissioner (Appeals) for the first time in contravention of the plain provisions of sub-section (5) of section 80A of the Act and there was nothing on record to indicate that the Commissioner (Appeals) had satisfied himself as to the satisfaction of conditions necessary for allowing the benefit under section 80-IB(10) of the Act. The direction of the Commissioner (Appeals) to allow the benefit under section 80-IB(10) of the Act was contrary to the plain provisions of section 80A(5) of the Act. AY. 2011-12, 2012-13

Dy. CIT v. Kishor Shankar Garve (2022)97 ITR 49 (SN) (Pune) (Trib)

S. 80IB(10) : Housing projects- VAT liability pertaining to earlier years arising during relevant Assessment Year –Allowable expenditure; VAT pertaining to eligible projects cannot be claimed as deduction against income of non-eligible project merely for absence of revenue in eligible projects. [S. 145]

Assessee was a builder/developer who had undertaken projects eligible for deduction under section 80-IB(10) as well as other projects (non-eligible projects). Separate sets of books were maintained for both types of projects. No revenue was earned from section 80-IB eligible projects. Liability of VAT pertaining to period 2006 to 2010 arose during relevant Assessment Year on account of a decision of Supreme Court; holding that VAT was payable by builders too. This amount of VAT (even though attributable to section 80IB projects) was claimed as expenditure in non-eligible projects' P&L account. AO disallowed the said expenditure holding the same to be prior period expenses. CIT(A) upheld the said disallowance.Held that it was on account of a decision of the Supreme Court rendered during the relevant Assessment Year; the Assessee was liable to pay VAT pertaining to preceding years. Since, such amount of VAT was not claimed as deduction during the respective preceding years; it was allowable during the relevant Assessment Year. However, merely because there was no revenue from section 80IB eligible projects, Assessee cannot claim VAT pertaining to section 80IB eligible projects in the P&L account of non-eligible projects. Thus, VAT paid and claimed as deduction in P&L account of non-eligible project was disallowed but was permitted to be added in the value of Work in progress of section 80IB eligible project. (AY. 2014 -15)

Nandan Associates v. ITO (2022) 216 DTR 409 / 97 ITR 35 (SN) / 219 TTJ 114 / 145 taxmann.com 309 (SMC) (Pune)(Trib)

S. 80IB(10): Housing projects - Deduction is to be allowed if the architects certificate is issued though the return is filed within time under Section 139(4) of the Act . [S.139 (4)]

The deduction under Section 80IB(10) is to be allowed to the assessee if the architects' completion certificate has been issued which is sufficient compliance and there is no requirement to issue a proper completion certificate and if the AO has stated in the subsequent assessment year that construction has been completed for the relevant year, and return of income is to be taken to be filed within time if the filing of the return is in compliance with Section 139(4) of the Act. (AY. 2009-2010)

Sunil Vishambaharnath Tiwari v. ITO (2022) 215 TTJ 617/ 210 DTR 41 (Nag)(Trib)

S. 80IB(10) : Housing projects-One unit in project admeasuring more than 1,500 Sq. Ft.-Entitled to proportionate deduction.

Held that only one unit in the project admeasured 1,508.41 sq. ft. This fact had been confirmed by the Department Valuation Officer. The assessee could not be denied deduction in respect of the entire remaining housing project under this provision just because one unit was in excess of 1,500 sq. ft. The order of the Commissioner (Appeals) allowing proportionate deduction under section 80IB(10) was proper.(AY.2012-13)

ACIT v. West Wing Infra Projects (2022) 94 ITR 58 (SN)(Ahd) (Trib)

S. 80IC : Special category States-Business of Information and Communication Technology-Unit III-Splitting up or reconstruction-Separate books of account maintained-Entitle to deduction as a sperate unit.

Held that with a view to expand its business had started a new Unit-III by making investment and new employees were recruited by assessee for said Unit-III and separate account books were maintained by assessee qua Unit-II and Unit-III. The assessee would be entitled to claim benefit under section 80-IC by treating Unit-III as a separate and distinct Unit. (AY. 2010-11)

PCIT v. Altruist Technologies (P) Ltd. (2022) 287 Taxman 269 / 217 DTR 385/ 328 CTR 580 (HP)(HC)

S. 80IC : Special category States -Software development – Non -eligible unit – R&D Center - Apportionment of cost - Matter remanded- Deduction under S. 80IC has to be restricted only to the transfer of CD writing activity of the Parwanoo unit to the Pune unit and not beyond that- Entire disallowance made by the AO in respect of sales made to third parties cannot be upheld- Partial disallowance affirmed while computing the Arm's length Price . [S.80IA(8), 80IA(10), 80IC, 92C, 92CA(4)]

Held that the costs of software development incurred by the assessee's R&D Centre located at Pune are charged to the Parwanoo unit (eligible for deduction under s. 80-IC) without any mark-up, the AO, in principle, cannot be faulted with for determining the market price of the CD writing done by the Parwanoo unit and then transferred to the Pune unit for the purpose of arriving at the amount of eligible profit for the deduction under s. 80-IC; since several issues raised by the assessee have not been adjudicated by the CIT(A), the order is set aside and the matter is restored to his file for dealing with all such issues. AO having followed the first situation contemplated by sub-s. (8) of s. 80-1A by determining the market value of the CD writing activity done at the assessee's Parwanoo unit (eligible business) and not the market value of the software development activity done by the R&D Centre in Pune (non-eligible business), deduction under S. 80-IC has to be restricted only to the transfer of CD

writing activity of the Parwanoo unit to the Pune unit and not beyond that: entire disallowance made by the AO in respect of sales made to third parties as well cannot be upheld. AO having made reference to the TPO for determining the ALP of the SDTS of 'sale from unit at Himachal Pradesh to unit at Pune' and 'allocation of common expenses from Pune unit to Himachal Pradesh unit' and neither disputed the sales price from unit at Parwanoo to the Pune unit nor the allocation of common expenses from the Pune unit to the Parwanoo unit, whose ALP was determined by the TPO, it cannot be held that the AO lacked jurisdiction to make partial disallowance under S. 80IC vis-a-vis overpricing of the CD writing activity done by the Parwanoo unit; case is not hit by S. 92CA(4) in any manner. (AY 2012-13 , 2013-14)

Biz Secure Labs (P) Ltd. v. Dy. CIT (2022) 220 TTJ 1028 (Pune)(Trib)

S. 80IC : Special category States -Survey – Printing and publishing at Gagret with technique and machinery – 139 employees were found working at the time of survey - Outsourcing activities – Entitle to deduction [S. 133A , 145(3)]

Held that the assesseee running a fully operational printing and publishing unit at Gagret in Himachal Pradesh , there was no evidence on record to show that the assessee was outsourcing significant of printing work to its sister concern located at Jalandhar or that the charges for such work was paid is lower than the market rate. The assessee is entitle to deduction . (AY. 2005 -06 to 2010 -11)

Dy.CIT v. MBD Printographics (P) Ltd (2022) 215 TTJ 198 (Amritsar)(Trib)

S. 80IC : Special category States -Production of Air conditioners — Unit in leased premises – Deletion was addition was justified .

Held that the inspection was conducted on March 29, 2013 and could not be relied upon to conclude what was the state of affairs in or up to November, 2011. The Inspector’s report lacked technical knowledge or awareness of the product being manufactured. The distinction in the end product being manufactured, at the time of inspection as opposed to air conditioners being manufactured in 2011 was not noticed. The employees whose statements had been relied upon were admittedly not authorised personnel, and not competent to comment. The report, accordingly, was a meaningless exercise. Effective and a fair hearing on the issues was denied to the assessee. The unit had been duly set up in the leased premises, electricity usage, machinery had been purchased by the new unit and the air conditioners had been manufactured and sold and had been accepted by the excise authorities and all contemporaneous evidence remained unassailed on record. Order of CIT(A) was affirmed . (AY.2010-11, 2012-13)

Dy. CIT v. Amber Enterprises (India) Pvt. Ltd. (2022)100 ITR 28 (Chd)(Trib)

S. 80IC : Undertakings-Special category states-Manufacturing of plastic packaging products such as PET and HDPE bottles-Eligible for deduction. [S.80IC (2)(a)]

Assessee company was engaged in business of manufacturing of plastic packaging products such as PET and HDPE bottles, jars, caps and closures. It claimed deduction under section 80-IC. Assessing Officer held that products manufactured by assessee were in nature of goods and articles specified in 13th schedule of Income-tax Act and, hence, assessee was not

eligible to claim deduction under section 80-IC, in view of conditions imposed under section 80-IC(2)(a). Held that claim of deduction under section 80-IC was examined thoroughly in first year of claim, i.e., assessment year 2005-06 as well as in assessment year 2007-08, and after being satisfied that conditions prescribed for claiming such deduction were fulfilled, such claim of deduction was allowed. Denial of exemption is not valid. (AY. 2005-06)
Vimoni India (P.) Ltd. v.DCIT (2022) 197 ITD 484 (Delhi) (Trib.)

S. 80IC : Special category States-Deduction to be restricted to extent of gross total income. [S.80A, 115JB]
Held that for purpose of calculation of tax liability under section 115JB, there is no scope for reducing book profit by the amount of deduction under section 80-IC. (AY. 2013-14, 2015-16)
Chheda Electricals and Electronics (P.) Ltd. v. DCIT (2022) 195 ITD 354 (Pune) (Trib.)

S. 80M : Inter corporate dividends-Fifty Per Cent. of average cost of borrowing considered as proportionate to earning of income from dividend out of borrowed funds-Proportionate interest expenditure alone to be disallowed-No disallowance of management expenses.

Held that fifty Per Cent. of average cost of borrowing considered as proportionate to earning of income from dividend out of borrowed funds, therefore proportionate interest expenditure alone to be disallowed. No disallowance of management expenses shall be made.(AY. 1992-93)

Indbank Merchant Banking Services Ltd. v. Dy. CIT (2022)94 ITR 4 (SN)(Chennai)(Trib)

S. 80P : Co-operative societies-Regional Rural Bank deemed to be Co-Operative society-Entitled to deduction.[S. 80P(2)(a)(i)), 80P(4), 271(1)(c), Regional Rural Banks Act, 1976, S. 3, 22]

Held that Tribunal had recorded a clear finding of fact that the assessee had come into existence for development and growth of the agricultural sector. This finding of fact had not been disputed. The assessing authority himself had recorded a finding that the assessee came into existence with effect from March 31, 2008, after amalgamation of two regional rural banks. By virtue of the deeming provision under section 22 of the Regional Rural Banks Act, 1976, the assessee was deemed to be a co-operative society. The assessee was entitled to special deduction under section 80P of the Income-tax Act, 1961. Court also affirmed the deletion of penalty u/s 271(1)(c) of the Act. (AY.2012-13 to 2016-17)

PCIT. v Baroda Uttar Pradesh Gramin Bank (2022)447 ITR 218 (All)(HC)

S. 80P : Co-operative societies-Interest earned from deposits in other Co-Operative Banks-Entitled to deduction-Interest on deposits in Treasury-Not entitled to deduction [S.80P(2) (a)(i), 80P(2)(d)]

Held that interest earned from deposits in other Co-Operative Banks is entitled to deduction and interest on deposits in Treasury is not entitled to deduction. Referred Mavilayi Service Co-Operative Bank Ltd. v. CIT (2021) 431 ITR 1 (SC) *(*AY.2011-12, 2013-14, 2014-15)

PCIT v. Peroorkada Service Co-Operative Bank Ltd (2022)442 ITR 141 / 217 DTR 246/ 328 CTR 443 (Ker) (HC)

PCIT v. Vilappil Service Co-Operative Bank Ltd. (2022)442 ITR 141/ 217 DTR 246/ 328 CTR 443 (Ker) (HC)

S. 80P : Co-operative societies-Providing Loans to associate or nominal members-Interest earned-Matter remanded. [S. 80P(2)(a)(i)

The court set aside the assessment order and remanded the matter to the Assessing Officer to reconsider the matter in the light of the judgment of the Supreme Court in Mavilayi Service Co-Operative Bank Ltd. v. CIT (2021) 431 ITR 1 (SC) wherein the Supreme Court considering the definition of "member" in the State Act and expressly permitting loans to non-members held that loans given to nominal members qualified for the purpose of deduction under section 80P(2)(a)(i) of the 1961 Act) with reference to sections 2(f) and 60 of the Karnataka Co-operative Societies Act, 1959, read with section 80P(2)(a)(i) of the 1961 Act.(AY.2013-14)

Sri Laxmi Venkatesh Credit Co-Op. Society Ltd. v.PCIT (2022)441 ITR 598 (Karn) (HC)

S. 80P : Co-operative societies-A co-operative society registered under Karnataka Souharda Sahakari Act, 1997 would be construed as co-operative society-Entitle to claim benefit [S. 2(19)]

Held that the assessee which is a co-operative society registered under Karnataka Souharda Sahakari Act, 1997 would be construed as co-operative society within ambit of section 2(19) and thus, would be entitled to claim benefit of section 80P of the Act.(AY. 2013-14, 2014-15)

Government of India Ministry of Finance v. Karnataka State Souharda Federal Co-operative Ltd. (2022) 285 Taxman 529/ 211 DTR 105/ 325 CTR 280 (Karn) (HC)
Swabhimani Souharda Credit Co-Operative Ltd v. ITO (2022] 285 Taxman 529/ 211 DTR 105/ 325 CTR 280 (Karn) (HC)

S. 80P : Co-operative societies-A co-operative society registered under Karnataka Souharda Sahakari Act, 1997 would be construed as co-operative society-Entitle to claim benefit [S. 2(19)]

Court held that a co-operative society registered under Karnataka Souharda Sahakari Act, 1997 would be construed as co-operative society is entitle to claim benefit. (AY. 2017-18)

Sri Martha Vividoddesha Pathima Souharda Sahakarii Niyamitha v.UOI (2022 285 Taxman 230 (Karn)(HC)

S. 80P : Co-operative societies-Society formed for enabling financial and social welfare of toddy tappers and workers for tapping and selling toddy-Could not be considered co-operative society engaged in collective disposal of labour of its members-Eligibility of assessee for deduction as society engaged in marketing of agricultural produce grown by its members-Matter remitted to Tribunal.[S.80P(2)(a)(vi)]

The assessee, a registered co-operative society formed in the year 2001 for enabling financial and social welfare of toddy tappers and workers for tapping and selling toddy within the Hosdurg jurisdiction, claimed exemption under section 80P(2)(a)(vi) of the Income-tax Act, 1961. The AO denied the said exemption on ground that assessee-society was granted registration as a miscellaneous society and, thus, could not be treated as a society engaged in collective disposal of labour of its member. On appeal, the assessee contended that toddy vending by members of assessee-society was for marketing agricultural produce grown by its members which was dealt in sub-clause (iii) of section 80P(2)(a), therefore, its claim for deduction of income earned by society under section 80P(2)(a) was legitimate. The Tribunal merely upheld the decision of the AO. On appeal to the High Court held that the Tribunal was right in holding that the assessee-society could not be considered a co-operative society engaged in the collective disposal of labour of its 2016 members as contemplated under section 80P(2)(a)(vi) of the Act and therefore was not eligible for deduction under section 80P of the Act. Decision in Peravoor Range Kallu Chethu Vyavasaya Thozhilali Sahakarana Sangham v. CIT (2016) 380 ITR 34 (Ker*)* (HC) was followed. That on the issue of eligibility of the assessee for deduction under section 80P(2)(a)(iii) of the Act the matter was to be remitted to the Tribunal for consideration and disposal, in accordance with law. (AY. 2009-10, 2010-11, 2011-12)

Hosdurg Range Kallu Chethu Thozhilali Vyavasaya Sahakarana Sangham v. CIT (2022) 440 ITR 65/ 285 Taxman 133 (Ker) (HC)

S. 80P : Co-operative societies – Dividend received from Co-Operative Bank -Eligible deduction .[S. 2(19), 80P(2)(d)(i), 80P(2)(iii)]

Held that a co-operative bank falls within the realm of the definition of "co operative society" as contemplated in S. 2(19) of the Act . Accordingly the dividend income received by the assessee from a co-operative bank is eligible for deduction under 80P(2)(d) of the Act . (AY.2011-12)

Gramin Sewa Sakakari Samiti Maryadit v. ITO (2022) 215 DTR 193 (Raipur)(Trib)
Sewa Sahakari Samiti Maryadit v. ITO (2022) 215 DTR 193 (Raipur)(Trib)

S. 80P : Co-operative societies – Claim not made in the return – Claim made in the course of assessment proceedings – Eligible to deduction . [S. 80A(5), 80 AC , 80P(2)(a)(i), 139(1), 139(4)]

Held that as per the provision of S. 80AC the requirement of filing the return before the time under S. 139(1) is sine qua non for claiming deduction under the six sections . [80-IA or 80-IAB or 80-IB or 80-IC or 80-ID or 80-IE]. In other words, if a return is filed belatedly under

S. . 139(4) or under any other section, claiming deduction under any of the six sections, the writ of the s. 80AC will operate to prevent its granting. This section does not deal with granting or non-granting of deduction under any other sections of part C of Chapter VI-A, including S. 80P. On a conjoint reading of S. 80A(5) and 80AC, it gets manifest that requirement of making a claim for deduction under the relevant sections of Chapter VI-A (other than the sections specified in S. 80AC) in the return of income is directory; even if the claim is made during the course of assessment proceedings, it has to be allowed; authorities below were not justified in rejecting the assessee's claim of deduction under s. 80P only on the ground that such a claim was not made in the return but during the course of assessment proceedings. Followed , CIT v. G.M. Knitting Industries (P) Ltd. (2015) 376 ITR 456 (SC) **.**Directed the AO to allow the deduction after verification . (AY.2009-10)

Krushi Vibhag Karmchari Vrund Sahakari Pat Sanstha maryadit v. ITO (2022) 220 TTJ 243 / 219 DTR 161 (SMC) (Nag)(Trib)

S. 80P : Co-operative societies - Collective disposal of labour of its members – Enhancement of gross profit is not valid – Entitle to deduction. [S.80P(2)(a)(vi)]
Held, that the gross receipts should be determined by allowing reasonable deduction of items such as tax deducted at source, value added tax, security, cess and other deductions. The assessee had made a correct calculation on account of contract receipt. The Tribunal in its earlier case had already determined the turnover and with regard to deduction under section 80P(2)(a)(vi) specific direction was made. The Revenue authorities could not go beyond the directions of the Tribunal. (AY. 2010 -11)

Malwa Co-Op. L and C Society Ltd. v. ITO (2022) 99 ITR 165 (Amritsar) (Trib)

S. 80P : Co-operative societies -Interest from Co-Operative Banks —Entitle to deduction .[S. 2(19), 80P(2)(d)]
Held that the assessee was entitled to the deduction under section 80P(2)(d) of the Act in respect of interest income earned from investment with co-operative banks, which were registered as co-operative societies under the relevant statute. Followed Kaliandas Udyog Bhavan Premises Co- Operative Society Ltd v. ITO, ITA No 6547 /Mum/ 2017 dt 25 -4 - 2018 (AY.2014-15, 2016–17 to 2018–19)
Maker Tower A&B Co–Operative Housing Society Ltd v . ACIT (2022)99 ITR 73 (SN)(Mum) (Trib).

S. 80P : Co-operative societies -Late filing of return – Disaalloowing is not justified - Due to late filing of return having been introduced by Finance Act, 2021 effective from 1-4-2021 .[S. 8AC, 143(1)]
Assessee, a primary agricultural co-operative society, filed its return claiming deduction under section 80P of the Act . Assessing Officer disallowed deduction on grounds of return being filed belatedly only after intimation under section 143(1) . Tribunal held that the enabling provisions of sub-clause (v) of section 143(1)(a) providing for disallowance of deduction under section 80P due to late filing of return was introduced by Finance Act, 2021 effective from 1-4-2021 and it was not on statute for relevant assessment years 2018-19 and 2019-20, therefore, Assessing officer lacked jurisdiction to make disallowance under section 80P in order under section 143(1) during relevant years . (AY. 2018-19 , 2019-20)

Barwara Co-Operative Agri Service Society Ltd. v. Dy. CIT (2022) 219 TTJ 750 / 218 DTR 14 / 146 taxmann.com 468 (SMC) (Chd)(Trib)
Beh Co -Operative Agri Services Society Ltd v. Dy. CIT (2022) 219 TTJ 750 / 218 DTR 14 / 146 taxmann.com 468 (SMC) (Chd)(Trib)
Chhata Co -Operative Agri Services Society Ltd v. Dy. CIT (2022) 219 TTJ 750 / 218 DTR 14 / 146 taxmann.com 468 (SMC) (Chd)(Trib)
Garoh Co-operative Agri Service Society Ltd. v. Dy. CIT (2022) 219 TTJ 750 / 218 DTR 14/ 146 taxmann.com 468 (SMC) (Chd)(Trib)
Lanjani Co-operative Agri Service Society Ltd. v. Dy. CIT (2022) 219 TTJ 750 /218 DTR 14 / (2023) 146 taxmann.com 468 (Chd)(Trib)

S. 80P : Co-operative societies -Not a co-operative bank-Entitled to deduction. [S.80P(2)(a)]
Where the assessee society is not a co-operative bank since it does not hold a license with RBI and is not lending to and accepting deposits from the public and is providing credit facilities to its members towards agricultural operations, the deduction is to be allowed under Section 80(P)(2)(a) (AY.2011-2012,2014-2015, 2017-2018)
Tamilnadu Co-operative State Agriculture and Rural Development Bank Limited v. ACIT (2022) 219 TTJ 303/ 217 DTR 145 (Chennai) (Trib)

S. 80P : Co-operative societies-Agricultural cooperative society-Section 80A(5) was applicable only when a return of income was filed by an assessee and a deduction under chapter VIA was not claimed in such return and it would not apply to a case where no return of income was filed-Matter remanded-Provision of section 80AC is not applicable to claim under section 80P. [S.80A (5), 8AC]
Assessee, a primarily agricultural cooperative society, had not filed return of income for relevant assessment year. Assessing Officer on basis of income and expenditure account, balance sheet and cash book produced by assessee determined business income of assessee at certain amount. He further did not entertain claim of assessee for deduction under section 80P and denied benefit of deduction under section 80P for reason that as assessee had not filed return of income making a claim for deduction under section 80P, no deduction shall be allowed as per section 80A(5). Held that section 80A(5) was applicable only when a return of income was filed by an assessee and a deduction under chapter VIA was not claimed in such return of income and it would not apply to a case where no return of income was filed-Held, yes-Whether since provisions of sections 80A(5) and 80AC were not applicable. Accordingly the revenue authorities were not justified in not entertaining claim of assessee for deduction under section 80P as made by assessee. Issue of assessee's eligibility to claim deduction under section 80P remanded to Assessing Officer for examining afresh.Held that provisions of section 80AC which contemplates denial of deduction in respect of certain provisions of Chapter VI "A" of Act, if a return of income is not filed by an assessee, do not apply to claim for deduction under section 80P (AY. 2017-18)
Prathamika Krishi Pattina, Sahakara Sangha Ltd. v. ITO (2022) 196 ITD 649/ 220 TTJ 1024/ 220 DTR 156 (Bang) (Trib.)

S. 80P : Co-operative societies-Co-operative Bank-Dividend income –Short-term deposit with co-operative bank-Eligible deduction [S. 2(19), 80P(2)(d), 80P(2)(a)(i)]
Dividend income received by the Co-operative Society from a co-operative bank would be eligible for deduction under section 80P(2)(d) of the Act. Surplus funds parked by way of

short-term deposit with a co-operative bank were inextricably interlinked, or in fact interwoven with its business of providing credit facilities to its members-Whether therefore, the same, as claimed by assessee would be eligible for deduction under section 80P(2)(a)(i) (AY. 2011-12)

Gramin Sewa Sahakari Samiti Maryadit v. ITO (2022) 195 ITD 244 / 217 TTJ 337 (Raipur) (Trib)
Sewa Sahakari Samiti Maryadit v.ITO (2022) 195 ITD 244 / 217 TTJ 337 (Raipur) (Trib)

S. 80P : Co-operative societies-Interest-Bank-Bank not being a co-operative society interest income could not be said to attributable to activities of co-operative society-Not eligible for deduction-Interest income reduced by administrative expenses and other proportionate expenses to earn said income had to be brought to tax as income from other sources.[S. 56, 57, 80P(2)(d)]
Held that Bank not being a co-operative society interest income could not be said to attributable to activities of co-operative society is not eligible for deduction. Interest income reduced by administrative expenses and other proportionate expenses to earn said income had to be brought to tax as income from other sources.(AY. 2015-16)
Krishnarajapet Taluk Agri Pro Co-op Marketing Society Ltd. v. PCIT (2022) 194 ITD 311 (Bang) (Trib.)

S. 80P : Co-operative societies-Letting of godown-Milk parlours cannot be considered as godowns or warehouses as contemplated under section 80P(2)(e) and hence, rental income derived from letting of milk parlours will not be eligible for deduction under section 80P(2)(e) of the Act. [S.80P(2)(e)]
Held that milk parlours cannot be considered as godowns or warehouses as contemplated under section 80P(2)(e) hence, rental income derived from letting of milk parlours will not be eligible for deduction under section 80P(2)(e). (AY. 2014-15)
Hassan Co-operative Milk Producers Societies Union Ltd. v. ACIT (2022) 194 ITD 522 (Bang) (Trib.)

S. 80P: Co-operative societies-letting of "godowns" or "warehouses"-CAP storage-Considered a warehouse-Income from letting of CAP storage is eligible deduction. [S.80P(2)(e)]

The Act does not provide any specific definition of "godown" and "warehouse", nor is there a requirement for the structure to be permanent. The definitions in other laws observe that even a protected place or protected enclosure used for storing commodities is also a "warehouse". Considering the definition, the Tribunal noted that the CAP storage might not be a permanent structure but included within the "warehouses" definition. Section 80P is a beneficial provision, and the purpose is to incentivize the warehousing activity of co-operative societies. Hence, the deduction/exemption under section 80P is allowable (AY. 2013-14)
M. P. State Cooperative Marketing Federation Ltd. v. ACIT (2022) 216 TTJ 493/ 211 DTR 370 (Indore) (Trib.)

S. 80P : Co-operative societies –Status-Matter remanded for fresh adjudication. [S. 2(19)) 80P(2)(a)(iii)]

ITAT remanded the matter for fresh adjudication.(AY. 2014-15, 2015-16)

ITO v. Sahkari Ganna Vikas Samiti (2022) 64 CCH 0228 / 216 TTJ 871 / 212 DTR 161 (All)(Trib.)

S. 80P : Co-operative societies-Interest received from Co-Operative Bank-Deduction u/s 80P(2)(d) cannot be denied.[S.80P(2)(d)]

Held that interest received from Co-Operative Bank,deduction u/s 80P(2)(d) cannot be denied. (ITA No. 1384&1385 /Mum/ 2021 dt 18-1 2022)(AY. 2016-17)

V.K.Natha Co-Operative Housing Society v. ACIT (2022) The Chamber's Journal-February-P. 184 (Mum) (Trib)

S. 80P : Co-operative societies-Interest earned on money deposited in Nationalised Bank-Taxable as income from other sources-Interest earned on securities with Reserve Bank of India-Eligible for exemption-Enhanced business profits on account of disallowances-Qualify for exemption-Members includes nominal members and extraordinary members-Eligible for exemption [S. 56, 80P(2)(a)(i), Maharashtra Co-operative Societies Act, 1960,]

Held that the interest earned on money deposited in the nationalised bank should be taxed as Income from other sources. Thus, the interest income earned on the investment of surplus money with banks was eligible for exemption under section 80P(2)(a)(i) of the Act.The interest earned on securities held with the Reserve Bank of India was exempt under the provisions of section 80P(2)(a)(i) of the Act. That the disallowances, if any, made would increase the business profits of the co-operative society. The enhanced business profits on account of disallowances made by the Assessing Officer would qualify for exemption under section 80P(2)(a)(i) of the Act. That under the provisions of the Maharashtra Co-operative Societies Act, 1960, the term members included nominal members and extraordinary members and in the circumstances, the Commissioner (Appeals) was not justified in denying the exemption under section 80P(2)(a)(i) of the Act.(AY.2013-14)

Nashik Road Nagari Sahkari Patsanstha Ltd. v. ITO (2022)93 ITR 44 (SN)(Pune) (Trib)

S. 89 : Relief for income-tax - Arrears or advance of salary - Compensation received by assessee was only salary received in advance and not as termination compensation and, therefore, relief claimed by assessee under section 89(1) read with sub-rule (2) of rule 21A was to be allowed. [R. 21A]

Assessee was one of employees in a company and said company due to heavy losses was closed on 11-1-2008 .Subsequently company entered into an agreement dated 25-11-2016 with assessee and paid to him one time lump sum ex gratia amount after deducting tax at

source in lieu of remaining years of service upto 63 years of age . Compensation received by assessee was only salary received in advance and not as termination compensation and, therefore, relief claimed by assessee under section 89(1) read with sub-rule (2) of rule 21A was to be allowed. Tribunal held thatlump sum as ex gratia in one go. Relying on the decision of Hon'ble Supreme Court in V.D. Talwar v. CIT [1963] 49 ITR 122 (SC), the Tribunal held that the compensation received by the assessee should be treated as only salary received in advance and therefore, directed the Assessing Officer to allow the claim of the assessee u/s. 89 r.w. rule 21A of I.T. Rules.(AY. 2017 -18)

Rajesh Shantaram Chawan v. ACIT (2022) 217 TTJ 86 (Mum)(UO) 141 taxmann.com 513 (Mum) (Trib)

S. 90 :Mutual agreement procedure-Once MAP is concluded by Indian CA basis amended Rules with necessary approvals butwithout calling for details, Revenue cannot subsequently contend that provisions of unamended Rules must apply and contend to defer MAP implementation [S. 90(2), IT Rule, 44F, 44G 44H, Art, 27(2)]

It was held that after the MAP is processed on a reference from US-CA under the provisions of the omitted Rule 44H, the Indian-CA has commenced discussions and negotiations are concluded on the cost base, markup percentage and brand royalty payments on the basis of the US TP adjustments. If the Indian-CA, after the amendment with effect from 6-5-2020, has proceeded with the MAP according to the amended rules, and if the communication as is issued, with necessary approvals and conclusion of MAP but without calling for details, the revenue cannot now contend that the provisions of unamended rule 44G must apply and it must defer the implementation of the concluded MAP because the petitioner did not invite the attention of the Indian-CA to the Indian TP adjustments.(AY.2010-11 to 2013-14)

Harman Connected Services Corporation India P. Ltd. v. Jt. Secretary (Foreign Tax and Tax Research-I) (2022)445 ITR 346/ 215 DTR 323/ 327 CTR 241 (Karn)(HC)

S. 90 :Double taxation relief -Beneficial ownership – long term capital gains – Transfer of shares of CMS Info Systems Ltd- –Matter remanded to the file of the Assessing Officer - DTAA -India - Mauritius [Art . 13(4)]

The assessee is a company incorporated in, and fiscally domiciled in, the Republic of Mauritius. It was incorporated on 8th June 2006 and it holds a global business licence (GBL) issued by the Financial Services Commission, Mauritius. The assessee is also registered as a foreign venture capital investor (FVCI) with the Securities and Exchange Board of India. The assessee has also been issued a „tax residency certificate" by the Mauritian Revenue Authority. During the relevant previous year, the assssee has sold equity shares of CMS Info Systems Ltd for a consideration to Sion Investment Holdings Pte Ltd .The Assessing Officer held that the said income earned by the assessee is in the nature of long term capital gains. The Assessing Officer held that the assessee is not eligible for benefit of India , Mauritius tax treaty . The Assessing Officer proceeded on the basis that since beneficial owner of the capital gains in question is an entity based outside Mauritius, the assessee is not entitled to the treaty protection in respect of capital gains in question. The Tribunal held that the Assessing Officer clearly fallen in error in proceeding on the basis that the concept of beneficial ownership in context of article 13 without assigning any specific and cogent reasons in support . The matter remanded to the file of the Assessing Officer to decide the issue in accordance with law . (AY. 2016 -17)

Black stone EP Capital Partners Mauritius V. Ltd v .Dy . CIT (2022) 214 DTR 158 (Mum)(Trib)

S. 90 :Double taxation relief -Credit for tax paid abroad-Foreign tax credit - Sales of units eligible for deduction under S. 10AA-DTAA – Taxes paid Australia and Canada, benefit of tax paid in Australia and Canada cannot be allowed against Indian income-tax - Taxes paid by the assessee in Japan, Switzerland and Malaysia are eligible for credit DTAA - India – Australia – Belgium – Canada – Japan – Malaysia , Switzerland [S. 10AA ,37(1), 90(1)(a)(i), 90(1)(a)(ii) , Art , 24 , 23, 23, 23, 24, 23]

Held thatthe assessee did not pay any tax in India in respect of sales of units eligible for deduction under S. 10AA made to Australia and Canada, benefit of tax paid in Australia and Canada cannot be allowed against Indian income-tax liability of the assessee under art. 24 of the DTAA between India and Australia and art. 23 of DTAA between India and Canada. Since the income from S. 10AA units arising in Belgium is chargeable to tax in India, even though it is not subjected to tax because of the deduction provided by this section, the requirement of chargeable under the Act stands fulfilled in terms of S. 90(1)(a)(i) r/w art. 23 of DTAA and, therefore, relief is allowable in respect of tax paid on such income in Belgium; language of para 2(a) of art. 23 of the DTAA between India and Japan, para 1(a) of art. 23 of the DTAA between India and Switzerland and para 2 of art. 24 of the DTAA between India and Malaysia is similar to that of the DTAA between India and Belgium and, therefore, taxes paid by the assessee in Japan, Switzerland and Malaysia are eligible for credit. (AY. 2013-14)

Capgemini Technology Services India Ltd. v. Dy. CIT (2022) 220 TTJ 409 (Pune) (Trib)

S. 90 :Double taxation relief -Non-Resident — Royalty — Fees for Technical services — Rate of tax -Most favoured nation clause - Protocol – Agreement was signed on same day of signing of protocol -No requirement of separate Notification for implementing most favoured nation clause — Not justified in denying benefit of straight rate of tax at 10 Per Cent. as per DTAA - Additional charging of surcharge and education Cess — Not justified — DTAA -India – Portugal [S 90(1) 115A , Art , 12]

Held, that if the provisions of the Double Taxation Avoidance Agreement were more beneficial to the assessee vis-a-vis provisions under the Act, the Assessee could choose to be governed by the beneficial provisions contained in the Double Taxation Avoidance Agreement. The Double Taxation Avoidance Agreement between India and Spain, having the Protocol containing the most favoured nation clause as its integral part, was duly notified on April 21, 1995, after having entered into force on January 12, 1995. On such notification of the Double Taxation Avoidance Agreement, the Protocol got automatically notified pronto, in terms of section 90(1) of the Act. Therefore, the requirement of a separate notification for implementing the most favoured nation clause, according to the CBDT Circular No. 3 of 2022 could not be invoked for the year under consideration, which was much prior to the CBDT circular of the year 2022. The authorities were not justified in denying the benefit of the straight rate of tax at 10 per cent. as per the Double Taxation Avoidance Agreement read with Portuguese Double Taxation Avoidance Agreement and also for additionally charging surcharge and education cess. .(AY.2016-17)

GRI Renewable Industries S. L. v. ACIT (2022)100 ITR 470 / 220 TTJ 59/ 219 DTR 33 (Pune) (Trib)

S. 90: Double taxation relief - Effective Management situated in Germany- Fee levied at Indian Airports - Not Income Derived From Operation Of Aircraft — Taxable In India As Business Profits DTAA- India – Germany [Art , 7, 8]

The Assessing Officer proposed to assess the collection charges received by the assessee from the Authority as business income chargeable to tax under article 7 of the DTAA. DRP approved the order of Assessing Officer . On appeal the Tribunal held that as the effective management of the assessee was situated in Germany the profits from operation of aircraft in international traffic were taxable only in Germany. However, the user development fee was levied at Indian airports as a measure to increase revenues of the airport operator. The user development fee was levied to bridge any revenue shortfall so that the airport operator was able to get a fair rate of return on investment. The collection charges paid by the Authority to the assessee whether called discount or commission was nothing but service charges paid for assessee collecting user development fee and passing it on to the Authority. The collection charges paid by the Authority to the assessee could not be said to be the income derived from operation of aircraft falling under article 8 of the DTAA between India and Germany.(AY.2014-15)

Lufthansa German Airlines v .Dy. CIT(IT) (2022) 95 ITR 17 (SN)/ 216 TTJ 958/ 212 DTR 123 (Delhi) (Trib)

S. 90 :Double taxation relief - Not made arrangements for declaration of dividends out of income earned in India - Income was to be charged at a higher rate of tax in India vis-à-vis domestic company and same could not be treated as discrimination on account of fact that assessee belonged to other Contracting State, i.e. Korea- DTAA -India – Korea .[S. 9(1)(i) , Art , 25]

Assessee, a banking company incorporated in Korea, was carrying on business in India through its PE .Assessee claimed that it would be eligible for benefit as per article 25 and its income was to be taxed at rate of 30 per cent applicable to a resident taxpayer instead of 40 per cent - Assessing Officer denied said claim. Tribunal held that Explanation 1 to section 90, which was brought into effect retrospectively from 1-4-1962 stated that charge of tax in respect of a foreign company at a rate higher than rate at which a domestic company was chargeable, shall not be regarded as less favourable charge in respect of such foreign company, where company had not made prescribed arrangement for declaration and payment within India, of dividends payable out of its income in India. Since assessee had not made arrangements for declaration of dividends out of income earned in India, its income was to be charged at a higher rate of tax in India and same could not be treated as discrimination on account of fact that assessee belonged to other Contracting State, i.e. Korea. (AY.2007-08)

Shinhan Bank v. Dy. DIT (IT) (2022) 218 TTJ 401 / 217 DTR 113 / 139 taxmann.com 563 (Mum)(Trib)

S. 90 : Double taxation relief-Foreign tax credit- FTC available if Form No 67 filed after due date of filing of return but before completion of assessment-DTAA-India-UK [R. 128, Art, 24]

Assessee filed return under section 139(1) and claimed foreign tax credit, however, form no. 67 was filed belatedly during course of assessment i.e. after due date of filing of return. Assessing Officer denied claim of assessee on ground that form no. 67 was not filed on or before date of filing of return in terms of rule 128(9). Held that since rule 128(9) does not say that if prescribed form would not be filed on or before due date of filing of return no such credit would be allowed, said rule could not be taken as mandatory and was to be considered purely directory. Assessee would be eligible for foreign tax credit when form no. 67 was filed before completion of assessment even though submission of said form was not in accordance with unamended rule 128(9). (AY. 2018-19)

Sonakshi Sinha. v. CIT (Appeal) (2022) 197 ITD 263/ (2023) 222 TTJ 376 (Mum) (Trib.)

S. 90 :Double taxation relief-Rental income-House properties situated in Australia and UK-Income declared in respective countries-Income not to be assessable in India-DTAA-India-Australia-UK [S. 90(2),90(3), Art. 6]

Assessee, a tax resident of India, received rental income from house properties situated in Australia and UK. Assessee declared her rental income from said properties in her return filed in respective countries. Assessing Officer after referring to Notification No. 91/2008 dt. 28-8-2008 invoked section 90(3) and included assessee's rental income under head income from house property.Commissioner (Appeals) upheld order of Assessing Officer on ground that income from house property was not taxable in respective countries and section 90(2) would not be applicable. Held that expression 'may be taxed' as occurring in Notification could not be construed as 'shall be taxable only in resident state' and in absence of an express provision, right of resident country to tax its residents could not be taken away under DTAA. Since provisions of section 90(1)(a)(i) was clearly applicable to facts of case, Assessing Officer erred in including rental income of assessee from properties held abroad in her income assessable in India. (AY. 2013-14, 2014-15)

Natasha Chopra. v. DCIT (2022) 196 ITD 185/ 220 TTJ 935/ 220 DTR 213 (Delhi) (Trib.)

S. 90 :Double taxation relief-Foreign tax credit (FTC)-Filling of statement in Form 67 on or before due date specified for furnishing return of income under section 139(1) is mandatory in nature and not directory-Statement in Form 67 after a delay of two years from due date of furnishing return of income-No valid reason-Justified in disallowing FTC claimed by assessee due to non-filing of Form 67 within time. [S. 139(1),Rule, 128(9), Form 67]

Assessee, a salaried employee, claimed foreign tax credit (FTC) while filing return of income but had not filed Form 67 before due date of filing of return under section 139(1) as prescribed under rule 128(9). Assessee realized filing of Form 67 only after scrutiny proceedings were initiated by Assessing Officer and filed same with a delay of more than two years. Assessing Officer invoked provision of Rule128(9) and disallowed FTC. The Assessee contended that Form 67 was not filed by its tax consultant due to oversight and same was to be considered as technical mistake. Held that since assessee filed Form 67 after a delay of two years without any valid and reasonable cause, Assessing Officer was justified in disallowing FTC claimed by assessee. Filling of statement in Form 67 on or before due date specified for furnishing return of income under section 139(1) is mandatory in nature and not directory. (AY. 2018-19)

Muralikrishna Vaddi. v. ACIT(2022) 196 ITD 705 / 220 TTJ 1049 / 220 DTR 177 (Vishakha) (Trib.)

S. 90 :Double taxation relief-Income from employment-Section 90does not bar operation of article 16 of DTAA with USA– Salary Income taxable in USA and assessee eligible for DTAA benefit if Assessee was Resident and Ordinarily Resident in India[S. 9, Art, 16]

Assessee qualified as a resident and ordinarily resident in India. The assessee had received salary income from US company and claimed that as his total stay during the year was 165 days only, salary income earned by him as per aforesaid provisions of article 16of India – US DTAAwas taxable in USA and not in India. The Assessing Officer held that as per section 90 the assessee qualified as resident and ordinarily resident in India for theyear under consideration and accordingly the DTAA is not applicable in respect of salary income earned in USA. On appeal, the Tribunal held that as per provisions of section 90 the assessee has the option to choose either DTAA or provisions of the Act whichever is beneficial to him for purpose of taxation of his income applicable to him. Accordingly the provision as beneficial to assessee is applicable. Order of AO was set aside

Rajat Dhara. v. DCIT (IT) (2022) 195 ITD 307/ 94 ITR 74 (SN)/ 220 TTJ 915 /(2023) 221 DTR 275 (Kol) (Trib.)

S. 90 :Double taxation relief-Collection charges paid by AAI to the assessee in whatever name called i.e. either discount or commission, is nothing but service charge paid, for assessee collecting UDF (User Development Fees) and passing it on to AAI-Cannot be said to be the income derived from operation of aircraft-Appeal dismissed-DTAA-India-Germany [Art. 7, 8]

Held that the collection charges in whatever name called i.e. either discount or commission is nothing but service charges paid, for assessee collecting the User Development Fees and passing it on to AAI and it is held that the collection charges paid by AAI to the assessee cannot be said to be income derived from operation of aircraft and not exempt from tax under Article 8 of DTAA with Germany. Appeal is dismissed. (AY. 2014-15)

Lufthansa German Airlines v. DCIT (IT) (2022) 64 CCH 261 / 95 ITR 17 (SN)/ 216 TTJ 958 / 212 DTR 123 (Delhi) (Trib)

S. 90 :Double taxation relief-Foreign Tax credit-Salary income-Rule 128(9) of Rules does not provide for disallowance of Foreign Tax Credit in case of delay in filing Form

No. 67,-Filing of Form No. 67 is not mandatory but a directory requirement-DTAA-India-Australia [S. 91, 139(1), 154,192, R. 128(9), Form no 67, Art, 24(4)(a)]

Assessee-individual offered to tax salary income earned for services rendered in Australia and claimed foreign tax credit for taxes paid in Australia under section 90 read with article 24 in a revised return of income. Assessee filed Form 67 in support of claim of foreign tax credit. Revised return of income was processed by Centralized Processing Centre (CPC) electronically and claim of FTC was disallowed. Assessee filed a rectification application before Assessing Officer and submitted that credit for FTC as claimed in return should be given. Assessing Officer upheld disallowance on ground that assessee had failed to furnish Form 67 on or before due date of furnishing return of income as prescribed under section 139(1) which is mandatory according to rule 128(9).CIT(A) affirmed the order of CIT(A). On appeal the Tribunal held that filing of Form No. 67 is not mandatory but a directory requirement and DTAA overrides the provisions of the Act and Rules cannot be contrary to the Act. Issue is not debatable.In view of legal position the assessee had right to claim Foreign tax Credit. (AY. 2018-19)

Brinda RamaKrishna. (Ms.) v. ITO (SMC) (2022) 193 ITD 840 (Bang) (Trib.)

S. 90: Double taxation relief-Foreign Company- PE in India-Company has not made prescribed arrangement for payment of dividends from income in India- Liable to tax at higher rates and would not be said to be discrimination - DTAA-India-Korea.[S. 2(22A), Art, 25(1)]

The assessee is a banking company incorporated in, and fiscally domiciled in, Korea. It is carrying on business, through its permanent establishment, in India. In light of Article 25, it was urged by the assessee that it should be charged to tax at 30 per cent and not 40 per cent. It was held that the levy of tax at a higher rate cannot be considered a less favourable levy of tax or more burdensome taxation vis-à-vis the domestic companies. Further, since assessee has not made "arrangements for the declaration of dividends out of income earned in India", and is charged at a higher rate of tax in India vis-à-vis domestic company, cannot be treated as discrimination on account of the fact that the enterprise belonged to the other Contracting State, i.e., Korea and was therefore liable to be taxed at higher rate.

Further, where assessee claimed deduction for interest paid by Indian PE to head office with respect to funds borrowed by PE, profits attributable to PE were to be computed on basis of hypothetical independence of PE from head office as provided in article 7(2), thus,interest paid by PE was to be allowed as deduction and fiction of hypothetical independence as determined under article 7(2) was for limited purpose of profits attributable to PE and could not be used for computation of profits of assessee, thus, interest paid by PE to head office could not be brought to tax in hands of assessee-bank, even though it was allowed as deduction in computation of profits attributable to PE. (ITA No. 6993/Mum/2012 dated June 27, 2022 (Bench 'I') (AY. 2007-08)

Shinhan Bank v. DCIT (2022) 218 TTJ 401 / 217 DTR 113 / 139 taxmann. com 563 (Mum) (Trib)

S. 90: Double taxation relief-Long term capital gains-Transfer of shares-Beneficial Ownership cannot be assumed or inferred-AO to decide whether the concept of "beneficial owner" is inbuilt in the scheme of Article 13-Matter remanded-DTAA-India-Mauritius. [S. 143(3),154, Art. 10, 11, 13(4)]

Assessee is a Mauritius Company and wholly owned subsidiary of a Cayman Islands companyand sold shares and earned income in nature of long term capital gains in India. The Assessing Officer held that the assessee had no independent existence. Its entire activity was controlled and directed as per the directions of its affiliates. The entire scheme of purchase and sale of shares was designed for the benefit of the entities in Cayman Islands of Blackstone Group, in the veil of carrying out transactions through them. Therefore, considering totality of fact the assessee is not entitled for the benefit of DTAA with Mauritius. Tribunal held that the concept of beneficial ownership being a *sine qua non* to entitlement to treaty benefits cannot, in the absence of specific provision to that effect, cannot be inferred or assumed. The matter was remanded back to the Ld. Assessing Officer to adjudicate upon foundational issues, i.e., whether the concept of 'beneficial ownership' is inbuilt in the scheme of Article 13 of Indo-Mauritius DTAA and, if so, what are the connotations of 'beneficial ownership' in this context. (AY. 2016-17)

Blackstone FP Capital Partners Mauritius V Ltd. v. DCIT (2022) 138 taxmann.com 328 (Mum) (Trib)

Editorial – Assessee filed a MA against the above Tribunal order challenging that the Tribunal ought to have decided the issue as all facts were available on record. Tribunal has recalled its order admitting that it should not have remitted the matter back to AO and has refixed the matter for hearing on merits.

S. 91 : Double taxation relief - Countries which no agreement exists -Foreign tax credit — Delay in filing Form 67 —Entitle to claim Foreign tax credit . [S. 139(5), R. 128(9) Form , 67]

Held, allowing the appeal the Tribunal held that mere delay in filing form 67 under the provisions of rule 128(9) of the Income-tax Rules, 1962 , as they stood during the year under consideration, would not preclude the assessee from claiming the benefit of foreign tax credit in respect of tax paid outside India. Since the claim of the assessee was denied on this technical aspect, the Assessing Officer was to decide the claim of the foreign tax credit on the merits, after accepting form 67 and other related documents filed by the assessee.(AY.2019-20)

Nirmala Murli Relwani v. ADIT (2022)100 ITR 64 (SN)/(2023) 198 ITD 603 (Mum) (Trib)

S. 92B : Transfer pricing-International transaction-Whether Corporate guarantee is an International Transaction-Substantial question of law admitted by High Court [S. 92C, 260A]

Tribunal held that corporate guarantee given by assessee on behalf of its Associated Enterprises was an international transaction under section 92B of the Act. On appeal to High Court, the assessee contended that provision of corporate guarantee to Associated Enterprises was in nature of shareholder service for which arm's length compensation was not required. High Court admitted the appeal on substantial question of law.

Je Energy Ventures (P) Ltd v. Dy.CIT (2022) 284 Taxman 634 (All)(HC)

S. 92B : Transfer pricing-Arm's length price-Provision of corporate guarantee to associated enterprise.[S.92C]

The Assessing Officer made an addition qua transfer pricing adjustment on account of provision of corporate guarantee by the assessee to its overseas associated enterprises, treating the interest rate of 1.3 per cent. based on average fees charged by State Bank of India. The Commissioner (Appeals) affirmed the addition qua corporate guarantee while reducing the adjustment to 0.5 per cent. instead of 1.3 per cent. as determined by the Transfer Pricing Officer. On appeals by the assessee and the Department the Tribunal held that that the Commissioner thoroughly analysed the peculiar facts and circumstances and deleted the addition. The order did not call for any interference.(AY.2015-16)

PCI LTD. v. ACIT (2022)93 ITR 47 (SN) (Delhi) (Trib)

S.92BA: Transfer pricing-Domestic transactions-Vide amendment by Finance Act, 2017, clause 6) of section 92BA had been omitted from 1-4-2017, it would be deemed that clause 6 has never been on statute and since nothing was specified whether proceeding initiated or action taken on this would continue, proceeding initiated or action taken under that clause would not survive.[S. 92C]

The assessee had entered into various Specified Domestic Transactions (SDT) referred to in clause (1) of section 92BA with its Associated Enterprises (AEs). Accordingly, case was referred to TPO under section 92CA. Tribunal held that since clause (1) deletion 92BA had been omitted by Finance Act, 2017 with effect from 1-4-2017 and nothing was specified whether proceeding initiated or action taken on this would continue, proceeding initiated or action taken under this clause would not survive at all and reference to TPO and consequent orders were had in law. (AY. 2016-17)

Shahi Exports. v. ACIT 194 ITD 177 (Delhi) (Trib)

S.92BA: Transfer pricing-Specified domestic transactions-Reference to Transfer Pricing Officer after provision omitted-Not valid-

Held, that the reference to the Transfer Pricing Officer in respect of specified domestic transactions mentioned in clause (i) of section 92BA was not valid, as the provision had been omitted. Accordingly, the Assessing Officer was directed to delete the addition relating to specified domestic transactions made under section 92CA of the Act..(AY. 2016-17)

Neogenetics Foods P. Ltd. v. Dy CIT (2022)94 ITR 22 (SN)(Bang) (Trib)

S.92BA: Transfer pricing-Specified domestic transactions-Interpretation-Omission of provision-Clause (i) of section 92BA being omitted by Finance Act, 2017 w.e.f. 1-4-2017

from statute, could not be made applicable in pending proceeding of assessee, and therefore, impugned order passed by TPO invoking such section 92BA(i) was without any basis and bad in law, thus, was liable to be quashed [S. 40A(2)]

During year, assessee had acquired assets and liabilities of two of its domestic AE upon making certain consideration. TPO treated said purchase of those two business undertaking under slump sale arrangement as Specified Domestic Transaction (SDT) under section 92BA(i) and accordingly made upward adjustments.On appeal it was contended that section 92BA(i) was deleted by Finance Act, 2017, with effect from 1-4-2017, and once deleted it had lost its existence and considered as a law never been existed. Tribunal held that where a provision is unconditionally omitted and in its place another dealing with same contingency is introduced without a saving clause in favour of pending proceedings, intention of legislature was that pending proceeding shall not continue but fresh proceedings for same purpose may be initiated under new provision., Clause (i) of section 92BA being omitted by Finance Act, 2017 with effect from 1-4-2017 from statute, could not be made applicable in pending proceeding of assessee and impugned order passed by TPO invoking such section 92BA(i) was without any basis and bad in law, thus, was liable to be quashed. (AY. 2014-2015)

Ammann India (P.) Ltd. v. ACIT *(*2022) 192 ITD 680/ 93 ITR 49 (SN) (Ahd) (Trib.)

S. 92C : Transfer pricing-Arm's length price-It is necessary that the controlled transactions be compared with uncontrolled transactions which are similar in all material aspects which determining the ALP. Since the comparable company fails in not only the service revenue from export/ ITES filter of 75% taken by the TPO but also the diminishing revenue filter and thus the Tribunal was correct in excluding such comparable.[S. 133(6)]

The exercise of determining the ALP in respect of international transactions between related parties is aimed at determining the price which would have been charged for products and services as nearly as possible if such international transactions were not controlled by the virtue of their being executed between related parties. The object of the exercise is to remove the effect of any influence of the prices or costs that may have been exerted on account of international transactions being entered into between the related parties. It is clear that for the exercise of determining the ALP to be reliable, it is necessary that the controlled transactions be compared with the uncontrolled transactions which are similar in all material aspects.

Thus, when the comparable not only failed on the service revenue from export/ ITES filter of 75% adopted by the TPO but also the diminishing revenue filter which has been demonstrated by the assessee, the Tribunal was correct in excluding such comparable and hence no inference in called for with respect to such finding of the Tribunal. (AY. 2012-13)

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PCIT v. Convergys India Service (P.) Ltd.(2022) 216 DTR 460 / 328 CTR 814 (Delhi HC)

S. 92C : Transfer pricing-Arm's length price-Comparability factors-Profit Margin/Profit Level Indicator-An enquiry under rule 10B(3) ought to be carried out, to determine as to whether material differences between assessee and said entity can be eliminated and unless such differences cannot be eliminated, entity should be included as a comparable. [R. 10B]

Dismissing the appeal of the Revenue the Court held that mere fact that an entity makes high/extremely high profits/losses does not, ipso facto, lead to its exclusion from list of comparables for purpose of determination of ALP. In such circumstances, an enquiry under rule 10B(3) ought to be carried out, to determine as to whether material differences between assessee and said entity can be eliminated and unless such differences cannot be eliminated, entity should be included as a comparable. (AY. 2013-14)

PCIT v. Amway India Enterprises. (2022) 289 Taxman 648 (Delhi)(HC)

S. 92C : Transfer pricing-Arm's length price-Most appropriate method-Manufacturing and trading of dental products and trading activity-95% trading and 5% manufacturing-Tribunal adopting RPM as MAM to benchmark transaction is held to be justified.[S. 260A]

Assessee-company is engaged in manufacturing and trading of dental products and trading activity constituted about 95 per cent of business and remaining 5 per cent was from manufacturing activity, mere fact that assessee had relied on TNMM in its transfer pricing report would not in any way preclude Tribunal from adopting RPM as MAM under section 92C, to benchmark transaction of assessee. Court also held that tax authorities as well as assessee are not precluded by positions taken in returns, documents or accounts and have duty (and a corresponding right) to apply correct legal principle and, thus, use of one method in a transfer pricing report does not estop assessee from later claiming that another method is most appropriate one, provided that is indeed correct position (AY. 2002-03)

PCIT v. Dentsply India (P.) Ltd. (2022) 289 Taxman 530 (Delhi)(HC)

S. 92C : Transfer pricing-Arm's length price-Selection of comparables-Functional dissimilarities and non-availability of segmental data-Finding of fact [S.92CA, 260A]

Dismissing the appeal of the Revenue the Court held that the Department had not demonstrated that the analysis done by the Tribunal and Dispute Resolution Panel while excluding the companies suggested by the Department from the list of comparablesbasis exclusion in earlier year on account of being functionally dissimilarwas in any manner contrary to the settled position in law as there was no change in functions performed by the assessee and accordinglyorderof Tribunal is affirmed.(AY.2011-12)

PCIT v. Macquarie Global Services Pvt. Ltd. (2022)449 ITR 306 (Delhi)(HC)

S. 92C : Transfer pricing-Arm's length price-Selection of comparables-An investment advisor or sub-advisory cannot be compared with a merchant banker or investment banker-Tribunal's finding based on decision of Supreme Court-No question of law.[S. 260A]

Dismissing the appeal of the Revenue the Court held that An investment advisor or sub-advisory cannot be compared with a merchant banker or investment banker and a company offering consultation services in area of strategy,risk management and regulatory economics and whose entire revenue was being generated from consultation fees was comparable to assessee-company engaged in investment advisory services. Followed CIT v. Carlyle India Advisors (P) Ltd (2013) 357 ITR 584 (Bom)(HC)(AY.2009-10)

PCIT v. Warburg Pincus India Pvt. Ltd. (2022)449 ITR 329/ 329 CTR 933/ 219 DTR 361/(2023) 290 Taxman 80 (Bom)(HC)

S. 92C : Transfer pricing-Arm's length price-Foreign comparables-Guidance note by ICAI and transfer pricing guidelines issued by OECD do not prohibit foreign AE to be a tested party-Foreign AE could be selected as a tested party-Where segmental results are available, adjustment can be made only on basis of individual transaction and not on aggregation basis..[S.92E]

Held that Indian Transfer Pricing guidelines issued by Institute of Chartered Accountants of India vide guidance note on report under section 92E by ICAI and transfer pricing guidelines issued by OECD do not prohibit foreign AE to be a tested party. Therefore, where on consideration of FAR profile of both assessee company and AE, Tribunal held that assessee company was a more complex entity when compared to its foreign AE, said foreign AE could be selected as a tested party. Order of Tribunal is affirmed. Court also held that, where segmental results are available, adjustment can be made only on basis of individual transaction and not on aggregation basis. (AY. 2012-13, 2013-14)

PCIT v. Almatis Alumina (P.) Ltd. (2022) 445 ITR 632 / 286 Taxman 378 / 214 DTR 185/ 326 CTR 849 (Cal)(HC)

S. 92C : Transfer pricing-Arm's length price-Exclusion of comparables-Order of Tribunal affirmed [S. 260A]

Dismissing the appeal of Revenue the Court held that the Tribunal had given cogent reasons for excluding the four companies as comparables on grounds of dissimilaritiesin functionsto determine the arm's length price of the assessee. The reasoning was factual and disclosed the functional and other reasons to elucidate dissimilarities between those four entities and the assessee. No substantial question of law.(AY. 2012-13)

PCIT v. Evalueserve.Com Pvt. Ltd. (2022) 444 ITR 674 (Delhi)(HC)

S. 92C : Transfer pricing-Arm's length price-Adjustments-Comparable-Tribunal correctly applied the principle and decided on facts-No question of law Stricture-Court directed that the Commissioner of Income-tax and CIT (Judicial)to review all appeals filed and with draw the same if it is on facts and settled law.[S. 92CA, 260A]

Dismissing the appeal of the revenue the Court held that the Revenue has failed to show as to how the finding arrived by the ITAT is perverse in any manner, The Revenue has also not been able to demonstrate that the analysis done by the ITAT while excluding the companies

suggested by the revenue from the list of companies was in any manner contrary to the settled position in law. Order of Tribunal is affirmed. Court also suggested that the Commissioner of Income-tax and CIT (Judicial)shouldreview all appeals filed and with draw the same if it is on facts and settled law. Court also directed the Counsel of Revenue to serve a copy of this order on the law Secretary (Government of India), Central Board of Direct Taxes,Principal Chief Commissioner of Income tax (Maharashtra)) and CIT (Judicial) for necessary action.(AY.2010-11)

PCIT v. 3I India Ltd (2022) 445 ITR 504/ 284 Taxman 487 (Bom)(HC)
Editorial : SLP of Revenue dismissed, PCIT v. 3I India Ltd(2022) 289 Taxman 295 (SC)

S. 92C : Transfer pricing-Arm's length price-Comparable-Opportunity of hearing was not given-Matter remanded [S. 254(1)]

Tribunal excluded three companies from comparable list without giving an opportunity to the assessee to counter argue against exclusion of comparable.On appeal, High Court remanded back to Tribunal to give opportunity of being heard to assessee and to consider whether said companies were comparable or not.(AY. 2010-11)
Jacob Engineering India (P)Ltd v. ACIT (2022) 285 Taxman 326 (Bom)(HC)

S. 92C : Transfer pricing-Arm's length price-Exclusion of comparable-Functionally assets and risk test-Order of Tribunal is affirmed [S. 260A]

Assessee-company is engaged in rendering engineering design services to AE. Tribunal held that a Government company which was huge and fast in terms of function performed, risk assumed and assets owned, was not acceptable as valid comparable.Further, other comparables wherein the company playing vital role in development of fertilizers industry in India, a company engaged in providing high-end technical services with prestigious urban infrastructure facilities such as airports, railways and metropolis engineering consulting projects could not be accepted as valid comparable.High Court affirmed the Order of Tribunal. (AY. 2011-12)
PCIT v. Fluor Daniel India (P.) Ltd (2022) 134 taxmann.com 356 (Delhi)(HC)
Editorial : Notice is issued in SLP filed by the revenue; PCIT v. Fluor Daniel India (P.) Ltd. (2022] 285 Taxman 280 (SC)

S. 92C : Transfer pricing-Arm's length price-Adjustment of filters, etc-No substantial question of law [S. 92CA, 260A]

Dismissing the appeal of the revenue the Court held that whether comparable had been rightly picked up or not does not give raise to any substantial question of law and unless perversity of finding of fact established no substantial question of law arises for consideration.(ITA.No. 918 of 2017 dt. 20-1-2021) (AY. 2007-08)

PCIT v. Mphasis Ltd (2021) 133 taxmann.com 274 / (2022) 446 ITR 361 (Karn)(HC)

Editorial : SLP of revenue is dismissed; PCIT v. Mphasis Ltd (2022) 284 Taxman 458 (SC)

S. 92C : Transfer pricing – Arm's length price – Selection of comparables- Turnover more than 200 crores- Assessee company making less than 200 crores in current year- Margin of current year alone to be taken. [S. 92A]

Held, that the companies whose turnover in the current year more than Rs. 200 crores should be excluded from the list of comparable companies as the turnover of the assessee company in the current year was less than Rs. 200 crores but in the earlier two years its turnover was more than Rs. 200 crores. Therefore, the Transfer Pricing Officer was directed to take the margins of this company for financial year 2015-16. (AY. 2016-17).

Aurigo Software Technologies P. Ltd. v. ITO (2022)98 ITR 294 (Bang) (Trib)

S. 92C: Transfer pricing – Arm's length price – Reconciliation of revenue- Matter remanded .

Held that for the immediately succeeding assessment year, i. e., assessment year 2013-14, the Assessing Officer accepted the assessee's submissions with regard to enhanced addition on account of suppressed income, and made no addition to its returned income in the final assessment order. Therefore, the Assessing Officer was to take into account the reconciliation of revenue according to the invoices vis-a-vis the financial statement and take a decision after affording a reasonable opportunity of hearing to the assessee. (AY. 2012 -13)

Vmware Software India P. Ltd. v . Dy. CIT (2022)98 ITR 219 (Bang) (Trib)

S. 92C : Transfer pricing – Arm's length price - Capital Utilization- Functioning at lower capacity than average- Adjustment for underutilization required- Import of raw material- Loss due to foreign exchange rates fluctuation- Foreign exchange rates fluctuation adjustment to be considered -Matter remanded to TPO.[S.92CA]

Held that the capacity utilization was to be computed as a weighted average of units produced with weights of the corresponding revenue achieved from each category of the products produced. Admittedly, the capacity utilization of the assessee was much lower than that of the comparable companies. The adjustment for capacity underutilization needed to be looked at afresh and hence, the issue was to be remanded to the Transfer Pricing Officer/Assessing Officer. The Tribunal also held that it was normal that the exchange rate was subject to fluctuation due to economic conditions. While determining the arm's length price, one had to consider those factors. Thus, the issue was remanded to the Transfer Pricing Officer with a direction to consider the foreign exchange fluctuation adjustment for computing the arm's length price of the assessee. (AY. 2011-12)

Denso Kirloskar Industries Pvt. Ltd. v. Dy. CIT (2022) 98 ITR 399 (Bang) (Trib)

S. 92C : Transfer pricing – Arm's length price - Working capital adjustment — Information regarding comparable companies not available in public domain — Matter remanded to Assessing Officer/Transfer Pricing Officer to decide issue afresh after affording opportunity of being heard .[S.92CA]

Held that the facts and figures with regard to the business of the assessee had to be furnished. If information available in the public domain was insufficient, it was beyond the power of the assessee to produce the correct information about the comparable companies. The Revenue had the powers to compel production of the required details from the comparable companies. If that power was not exercised to find out the truth then it could not be said that the assessee

had not furnished the required details and deny adjustment on account of working capital differences. Therefore, the issue was directed to the Transfer Pricing Officer/Assessing Officer for examination afresh after affording opportunity of being heard to the assessee.(AY.2016-17)
Aurigo Software Technologies P. Ltd. v .ITO (2022)98 ITR 294 (Bang) (Trib)

S. 92C : Transfer pricing – Arm's length price - Profit split method inappropriate-Assessee made no unique intangible contribution-Transactional net margin method appropriate- TPO to recompute arm's length price. [S.92CA , 144C]
Held, that, the decision of the Tribunal in the assessee's own case for the assessment year 2013-14, wherein the facts were identical, since the assessee had leveraged the use of technology from the associated enterprise without contributing any unique intangible to the transaction, the transactional profit split method could not be applied to determine the arm's length price of the assessee's international transactions with its associated enterprise and the Transfer Pricing Officer was directed to apply the transactional net margin method as the most appropriate one to determine the arm's length price. (AY. 2016-17)
Toyota Boshoku Automotive India Pvt. Ltd. v .ACIT (2022)98 ITR 363 (Bang) (Trib)

S. 92C : Transfer pricing – Arm's length price - Net Margin Method- Comparable Uncontrolled Price Methods- Bad debts – Written off - Write off does not affect the Arm's length price . [S. 36(1)(vii)]

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Held that when the Revenue accepted the transactional net margin method in respect of the sales and purchases, and the comparable uncontrolled price method in respect of the interest received on loans and reimbursement of expenses, the writing off of these two amounts was subsumed in the transactions of receipt of interest on loans, and did not necessitate any separate benchmarking. The addition made on account of the writing off by the assessee of the dues and bad debts from the Russian subsidiary were not sustainable.(AY. 2009-10)
Aurobindo Pharma Ltd. v. Dy. CIT (2022) 98 ITR 54 (SN)(Hyd) (Trib)

S. 92C : Transfer pricing – Arm's length price -Most Appropriate Method —Net Margin Method - Comparable Uncontrolled Price Method- Processing fees - Local guarantees issued based on counter guarantee received from overseas branches — Adjustment was deleted .
Allowing the appeal following the order of earlier year the Tribunal held that , that the entire risk of discharging the bank guarantees was borne by the overseas branch issuing the counter guarantees whereas the assessee merely provided support services in connection with processing of the guarantees, that the transactional net margin method would be the most appropriate method in the facts and circumstances of the instant case and comparable uncontrolled price method could not be applied because of non-availability of data, that the same transactions having been accepted by the Transfer Pricing Officer up to the AY. 2012-13 . Adjustment was deleted.(AY. 2013-14)
Australia and New Zealand Banking Group Ltd. v. Dy. CIT (IT) (2022) 98 ITR 61 (SN)(Mum) (Trib)

S. 92C : Transfer pricing – Arm's length price -Most Appropriate Method —Net Margin Method - Comparable Uncontrolled Price Method- Processing fees - Local guarantees issued based on counter guarantee received from overseas branches — Adjustment was deleted .

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Australia and New Zealand Banking Group Ltd. v. DY. CIT (IT) (2022) 98 ITR 61 (SN)(Mum) (Trib)

S. 92C : Transfer pricing – Arm's length price - Most appropriate method —Resale of online advertisement space— Resale Price Method most appropriate method.

Held that the resale price method generally should have been adopted as the most appropriate method. the advertisement publicity and business development expenses were not related to the distributor function of purchase and sale of online media transaction and that the assessee was a start-up company and was expanding its operations in India, therefore, it had incurred such expenses for increasing its valuation. These findings had not been controverted by the authorities. The resale price method was the most appropriate method for benchmarking the arm's length price of distributor function of the assessee.(AY. 2011-12, 2012-13)

Dy. CIT v. Komli Wedia India P. Ltd. (2022) 98 ITR 5(SN)(Mum) (Trib)

S. 92C : Transfer pricing – Arm's length price - Providing Crew for Employment on Principal's Vessels — Agency fee -Expenses incurred reimbursed by associated enterprise —Adjustment was made based on incorrect appreciation of facts-Adjustment was deleted .[S. 144C]

Held that in his remand report in reply to the additional evidence filed by the assessee, the Transfer Pricing Officer agreed with the fact that the assessee had received reimbursement of expenses from the associated enterprise but despite correctly noting the factual position, the Transfer Pricing Officer emphasised upon satisfaction of need, benefit and evidence test. The Dispute Resolution Panel also did not correctly appreciate the transaction between the assessee and its associated enterprise. It was not the case of the Revenue that the mark–up charged by the assessee for the services rendered to the associated enterprise under the agreement was not at arm's length. The Revenue had only doubted the genuineness of the reimbursement of expenses made by the assessee to its associated enterprise. However, the transaction was not reimbursement of expenses by the assessee to its associated enterprise but reimbursement of expenses by the associated enterprise to the assessee. In view thereof, the adjustment made by the Transfer Pricing Officer and upheld by the Dispute Resolution Panel in respect of international transactions of reimbursement of the seafarers expenses was based on incorrect appreciation of facts. The Transfer Pricing Officer was to delete the adjustment.(AY. 2016-17)

Zodiac Maritime Agencies India Pvt. Ltd. v. NEACE (2022) 98 ITR 48 (SN)(Mum) (Trib)

S. 92C : Transfer pricing – Arm's length price -Restricted only to the international transactions -VRS expenses – Similar cost incurred by the comparables if any also be given . [S.37(1), 92CA]

Held that the TP adjustment is to be restricted only to the international transactions rather than the entity level transactions. Tribunal also held that once the VRS expenses incurred by the assessee have been included in its total operating costs, similar costs incurred by the comparables, if any, should also be given a parallel treatment(AY. 2013-14)

Rieter India (P) Ltd. v. Dy. CIT (2022) 215 TTJ 13 (UO) (Pune) Trib)

S. 92C : Transfer pricing – Arm's length price -Comparable – Turnover more than Rs .200 crores – Excluded – Working capital adjustment [S. 92CA]

Held that the three companies, viz., ET Ltd., TE Ltd., and M Ltd., whose turnover in the current year was more than Rs. 200 crores were to be excluded from the list of comparable companies. *That the issue with regard to the grant of working capital adjustment was to be examined by the Transfer Pricing Officer/Assessing Officer afresh in the light of the decision of the Tribunal in* Huawei Technologies India Pvt Ltd. v. JT. CIT (OSD) [2019 101 taxmann.com 313 (Bang)(Trib) , after affording opportunity of being heard to the assessee.*(* AY.2017-18)

GE Be Pvt. Ltd. v. Dy. CIT (2022)99 ITR 47 (SN)(Bang)(Trib)

S. 92C : Transfer pricing – Arm's length price - Comparables — Loss making companies – Losses incurred in only one year — Companies can be included- Financial statements of companies from public domain - Matter remanded- Functionally different - Equipment Different from a component manufacturing company -Cannot be compared — Working capital adjustment- Additional evidence – Matter remanded – Adjustment is restricted to International transaction with Associated enterprise [S.92CA]

Tribunal held that Losses incurred in only one year hence the Companies can be included. Financial statements of companies from public domain. Matter remanded for verification. Functionally different, equipment different from a component manufacturing company cannot be compared. Working capital adjustment must be given .Matter remanded. Adjustment is restricted to International transaction with Associated enterprise. *(* AY. 2013-14)

TE Connectivity India P. Ltd. v . Dy. CIT , LTU (2022) 99 ITR 379 (Bang) (Trib)

S. 92C : Transfer pricing – Arm's length price - Sale of ophthalmic surgical electronic equipment, intraocular lenses, spare parts and pharmaceutical products. — Advertisement, marketing and sales promotion expenses — Bright Line Test — Expenditure incurred cannot be treated as International Transaction — Addition was deleted- Comparable- Functionally different companies cannot be taken as comparables.[S. 92CA]

Held that the assessee was not mandated to incur expenditure under an agreement between the assessee and the associated enterprise. It was also not disputed that the expenditure incurred by the assessee was towards its own business promotion in India as the assessee was a distributor. The assessee operated in a limited risk environment in respect of the distribution and marketing segment. Therefore, the Assessing Officer was directed to delete the addition made towards advertisement, marketing and sales promotion expenses. Held that Functionally different companies cannot be taken as comparables. . AY.2012-13)
Alcon Laboratories (India) Pvt. Ltd v. Dy. CIT (2022) 99 ITR 357 (Bang) (Trib)

S. 92C : Transfer pricing – Arm's length price - Comparables — Functionally dissimilar – Huge turnover and a giant company – Extrodinary events - Excluded from final list of comparable companies - Deferred trade receivables constitute International Transaction - Rate of Libor at six months + 400 basis points adopted by TPO was without any basis – Matter remanded . [S.92CA]
Held that functionally dissimilar, huge turnover and a giant company, extraordinary events companies are to be excluded from final list of comparable companies . Deferred trade receivables constitute International Transaction. Rate of Libor at six months + 400 basis points adopted by TPO was without any basis .Interest computation if at all should be based on the delay of individual invoices, which has not been done. The prime lending rate should not be considered and this reasoning will apply to adopting short-term deposit interest rate offered by the State Bank of India also. The rate of interest would be on the basis of the currency in which the loan was to be repaid. The issue with regard to determination of the arm's length price in respect of the international transaction of giving extended credit period for receivables was to be examined afresh by the Assessing Officer/Transfer Pricing Officer on the guidelines laid down in the decision in Tech Books International (P.) Ltd. v. Dy. CIT (2015) 63 taxmann.com 114 (Delhi) (Trib.) , after affording the assessee opportunity of being heard.(AY.2014-15)
Altisource Business Solutions Pvt. Ltd v .ITO (2022) 99 ITR 647 (Bang) (Trib)

S. 92C : Transfer pricing – Arm's length price -Operating costs —Reimbursement of certain costs from Associated Enterprises- No Adjustment of markup on Assessee's claim of pass-through cost .[S.92CA]
Held that certain expenses incurred by the assessee, for travelling, etc., on behalf of its associated enterprises, were reimbursed on cost-to-cost basis. In the past the Revenue had accepted that on the reimbursement of expenditure, no markup was required to be charged. However, in the year under consideration, the Revenue had changed its stand. In none of the orders from the assessment years 2002-03 to 2009-10, had the Transfer Pricing Officer held that the pass-through cost or reimbursement incurred by the assessee should have been included in its cost base. The Transfer Pricing Officer's order showed that he had not disputed any of the comparables selected by the assessee. Therefore, the set of comparables selected by the assessee deserved to be accepted as it had become final for the assessment year. Computation of the margin considering the reimbursement as cost base at 19.45 per cent. was also accepted by the Transfer Pricing Officer. The margin of the comparable companies selected by the assessee was 8.69 per cent. There was no reason to sustain the addition an account of adjustment of markup on pass-through cost claimed by the assessee. Accordingly, the transfer pricing adjustment was deleted. (AY.2010-11)
Capgemini India Pvt. Ltd. v. Dy. CIT (2022) 99 ITR 506 (Mum)(Trib)

S. 92C : Transfer pricing – Arm's length price -Comparables —Companies whose turnover more than Rs. 200 Crores cannot be taken as comparable - Working capital adjustment- Matter remanded . [S .92CA]
Held that that Companies whose turnover more than Rs. 200 Crores cannot be taken as comparable . Working capital adjustment- Matter remanded . *(* AY. 2015-16)

Capco Technologies P. Ltd. v. Dy. CIT (2022)100 ITR 280 (Bang)(Trib)

S. 92C : Transfer pricing – Arm's length price -Most Appropriate Method- Matter remanded . [S. 92D]
Held that the Transfer Pricing Officer had the authority to call for complete information of the transactions of import of raw materials and export of finished goods from the customs authorities including invoices thereof showing details of geography and volume. The Transfer Pricing Officer may also remove the related-party transactions from the relevant information. Therefore, it was appropriate to restore the matter to the Transfer Pricing Officer/Assessing Officer to compare the TIPS data with the international transactions of the assessee using the comparable uncontrolled price method of comparability as the most appropriate method. If this method failed, the Transfer Pricing Officer could explore another method including the transactional net margin method. Matter remanded . *(* AY. 2015-16)
Dow Chemical International P. Ltd. v .ITO (2022)100 ITR 82 (Mum)(Trib)

S. 92C : Transfer pricing – Arm's length price – Comparable - — Company having huge turnover and high profit margin and owning intangible intellectual property rights — Companies to be excluded – Company satisfying export turnover – To be included - Business process outsourcing activity" — Companies to be included - Working capital adjustment — Matter remanded. [S.92D R. 10B]
Held that IBPO Ltd. could not be included as it was in possession of brand value and intangibles which influenced the financial results. Huge turnover companies could not be considered comparable to smaller companies such as the assessee therein. The Assessing Officer/the Transfer Pricing Officer was to exclude I BPO Ltd. from the final list of comparables for the information technology enabled services segment.That if an extraordinary event had taken place by way of amalgamation that company could not be considered comparable one. The Assessing Officer/the Transfer Pricing Officer was to exclude SPI Ltd. from the final set of comparables for the information technology enabled services segment. That ES Ltd. was functionally dissimilar and engaged in knowledge process outsourcing and business process outsourcing services. Amalgamation with A impacted the profits of the company. The company could not be considered a comparable. Working capital adjustment the Matter was remanded.(AY.2016-17)
EIT Services India Pvt. Ltd. v. Dy CIT (2022)100 ITR 490 (Bang) (Trib)

S. 92C : Transfer pricing – Arm's length price -Comaparables - Turnover filter- Turnover more than Rs. 200 Crores to be excluded – Cloud services - to be excluded – Receivable – Matter remanded
Held that companies whose turnover in the current year was more than Rs. 200 crores were to be excluded for the purpose of comparable companies. That the assessee-company was engaged in providing cloud service to its associated enterprises but AS Ltd. was engaged in providing professional services and procurement, implementation and support of ERP products and services. The Dispute Resolution Panel was right in excluding it.That the assessee for the first time before the Dispute Resolution Panel sought to include A Ltd., and S Ltd. as comparables because they passed all the filters and functions, risk and assets analysis.

The issue was remitted to the Transfer Pricing Officer for consideration de novo..(AY.2016-17)

Softlayer Technologies Pvt. Ltd. v. ACIT (2022)100 ITR 382 (Bang) (Trib)

S. 92C : Transfer pricing – Arm's length price -Comparables — Software development service provider — Matter remanded .

Held that the company ET was rejected by the Transfer Pricing Officer on the ground that the financials of this company included figures from outside branches which were unconnected. The availability of unaudited accounts could not be a reason to reject the comparability of the company which satisfied all the filters. The issue was remitted to the Transfer Pricing Officer for consideration afresh. The Tribunal also held that the rate of interest would be on the basis of the currency in which the loan was to be repaid.(AY.2016-17)

Synamedia India Pvt. Ltd. v Dy. CIT (2022)100 ITR 357 (Bang) (Trib)

S. 92C : Transfer pricing – Arm's length price - Loans advanced to Associated Enterprises — Rate of interest for benchmarking foreign currency denominated loan — Libor to be taken as the basis — Not Indian prime lending rate- Pledge of shares for benefit of associated enterprise- To be benchmarked Rate at 0.5 Per Cent- Price adjustment scaled down to five Per Cent. of correct value of shares and for actual pledge period . [S.92B]

Held, that the LIBOR had to be the benchmark for Euro and USD transactions, rather than the rate of interest on domestic borrowings. The stand of the authorities in replacing the LIBOR with Indian prime lending rate could not be upheld. It was not even the case of the Department that the basic points above the LIBOR were inadequate or too low. Accordingly, the benchmarking by the assessee could not be faulted and the arm's length price adjustment was to be deleted.Held, that admittedly, the shares were pledged at the instance of or for the benefit of an associated enterprise of the assessee. Pledging shares for the benefit of an associated enterprise was an international transaction between the associated enterprises under section 92B of the Income-tax Act, 1961 . It was akin to a corporate guarantee and required to be benchmarked as such. The Assessing Officer was directed to adopt 0.5 per cent. as the arm's length consideration for the corporate guarantee issued by the assessee in favour of its associated enterprise. The arm's length price adjustment was to be scaled down to five per cent. of the correct value of shares and for the actual pledge period.(Ay.2008-09 to 2010-11)

Virgo Valves and Controls Ltd. v. Dy. CIT (2022)100 ITR 264 (Mum) (Trib)

S. 92C : Transfer pricing – Arm's length price - Abnormal raw material consumption — Directed to pass a speaking order -Comparable – Net margin method - Working capital adjustment — Allowable — Interest on external commercial borrowings — Libor + 150 basis points justified - Interest charged within range in accordance with RBI;s Master circular — Adjustment deleted. [S.92CA]

Held that the company M was a manufacturing and engineering company mainly into space and energy saving ejector vacuum systems. One of the products manufactured was the valve and the company in its annual report had given the financials of the valve products separately. The Transfer Pricing Officer had for the purpose of comparability considered the revenue and cost attributable to valve products only. The level of comparability under transactional net margin method was at a broad level of product comparability and high level functional comparability. Therefore, M could not be excludeThat the company Y was included by the assessee in its transfer pricing study but during the remand proceedings, the assessee sought its exclusion before the Transfer Pricing Officer on the basis that the list of

items manufactured by the company included products that were not similar to those of the assessee and the segmental profit with respect to valve products similar to the assessee was not available for comparability. There was no requirement for a segmental comparison, when the overall product range was very similar. Therefore, Y had a broad level of product comparability and high level of functional comparability and rightly included in the list of comparables by the Revenue authorities. That L was involved in manufacturing of industrial valves, coils, boiler mounting and forge fittings. The range of products include gun metal/bronze valves, cast steel valves, forged steel valves, cast iron valves, boiler mounting valves. The company served industries in oil and gas, power, marine and water, steel and mining, chemical and fertilizers and HVAC. Therefore, applying the principles laid down by the Tribunal in the assessee's earlier case, L should be included as a comparable, considering the broader product comparability and high level of functional comparability. Since this issue was not originally raised in the first round of proceedings, the entire issue of comparability of the companies was set aside to the Transfer Pricing Officer and it was open for the assessee to seek inclusion of this company based on a fresh transfer pricing study That the Assessing Officer was to allow the working capital adjustment to the assessee That the assessee's borrowing was for one year period according to the terms of the loan agreement and therefore the interest charged by the assessee at LIBOR + 150 basis points which was within the range according to the Reserve Bank's Master Circular, RBI/2005-06/87, A.P. (DIR Series) Circular No. 5, dated August 1, 2005, was within the arm's length. The adjustment made on this count was to be deleted.(AY.2007-08)

Walvoil Fluid Power India P. Ltd. v. Dy. CIT (2022)100 ITR 699 (Bang) (Trib)

S. 92C : Transfer pricing – Arm's length price - Medical Transcription Services and Information Technology and Information Technology enabled Services- Receivable outstanding – Addition was deleted .

Held that the average line rate charged by the assessee to its associated enterprise was higher than the rate charged by third-party vendors to the associated enterprise even after including the foreign currency loan interest of LIBOR + 3.25 per cent. to it and considering the credit period of 45 days (under its agreement with the associated enterprise) even after including the imputed interest cost to it. Therefore, the average line rate charged by the assessee to its associated enterprise in respect of provision of medical transcription services was at arm's length vis-à-vis comparable interest cost adjusted rate charged by the third-party vendors to the associated enterprise. Addition was deleted .Adjustment margin was also deleted .(AY.2017-18)

Aquity Solutions India Pvt. Ltd. v. Dy. CIT (2022)100 ITR 15 (SN)(Mum) (Trib)

S. 92C : Transfer pricing – Arm's length price -Purchase of raw materials- Method accepted in earlier years- Order of CIT(A) is affirmed . [S. 145]

Held, that the assessee had reliable data with regard to similar transactions with unrelated third parties and thus claimed the comparable uncontrolled price as the most appropriate method. Once the Department had accepted the method or proposition in earlier years, it was not open to it to take a different view in the subsequent years unless there was a change in the facts or in law. Order of CIT(A) is affirmed . (AY.2005-06)

Dy. CIT v. Global Wool Alliance Pvt. Ltd. (2022)100 ITR 12 (SN)(Kol.) (Trib)

S. 92C : Transfer pricing – Arm's length price- Comparables — Functionally different - To be excluded – Tolerance range Of ±5 Per Cent. to be considered -Transaction of overdue receivables covered under capital financing is to be benchmarked separately irrespective of whether interest charged by assessee from non-associated enterprises —

Rate of libor +3 Per Cent. for delayed remittances beyond allowable credit period. [S. 92CA]

Held that functionally different companies are to be excluded from the comparable . Tolerance range of ±5 Per Cent. to be considered .Transaction of overdue receivables covered under capital financing is to be benchmarked separately irrespective of whether interest charged by assessee from non-associated enterprises — Rate of libor +3 Per Cent. for delayed remittances beyond allowable credit period .(AY.2012-13)
Excellence Data Research P. Ltd. v. ACIT (2022)100 ITR 74 (Trib) (SN)(Chenai) (Trib)

S. 92C : Transfer pricing – Arm's length price -Advertisement, marketing and promotion expenditure — estimation at ad hoc figure of 1 per cent. of gross sales — Adjustment is not proper . [S.92CA]
Held that for the assessment year 2012-13, the Tribunal had held that determination by the Transfer Pricing Officer at an ad hoc figure 1 per cent. of gross sales and not a figure arrived at by calculation or method prescribed in section 92C(1) much less rule 10AB of the Income-tax Rules, 1962 was not sustainable. The Transfer Pricing Officer had merely presumed that there existed an arrangement between the assessee and its associated enterprises for promotion of the brand. No such arrangement had been brought on record. Therefore, taking a consistent stand in the matter, the adjustment was to be deleted.(AY.2013-14)
Roca Bathroom Products Pvt. Ltd. v. Dy. CIT (2022)100 ITR 65 (SN)(Chennai) (Trib)

S. 92C : Transfer pricing – Arm's length price – Transfer Pricing Officer was directed to compute profit level indicator of assessee at . 11.35 Per Cent – Selection of comparable – Functionally comparable to be included as comaparble [S. 92CA]

Held that the assessee had computed the profit level indicator at 11.35 per cent. which the Transfer Pricing Officer rejected and computed at 8.93 per cent. including in the gross revenue the sale of software which was not an international transaction at all as these transactions were with independent parties, not associated enterprises. .The Department could not show what was the incomplete information in such annual accounts. It was also not denied that it was functionally comparable. There was no justification in the Transfer Pricing Officer excluding this company on the ground that its operations were predominantly in India because there were international transactions in case of the assessee with its associated enterprises and that export oriented companies operating in similar line of business would alone be good comparable. Accordingly, as the company was functionally comparable, it was to be included in comparable analysis..(AY.2012-13)
Tricom Infotech Solutions Ltd. v .Dy. CIT (2022)100 ITR 41 (SN)(Mum) (Trib)

S. 92C : Transfer pricing – Arm's length price -Comparable – Functionally not comparable- Excluded from the list of comparbles. [S.92CA]
Held that a company which does most of these activities through its own employees is not functionally comparable to a company which outsources the majority of its work to third party vendors. In view thereof, CTIL should be excluded from the list of comparables, since CTIL was functionally different from the assessee-company.(AY.2008-09)

Weatherford Drilling and Production Services (India) Pvt. Ltd. v ACIT (2022)100 ITR 46 (SN)(Ahd) (Trib)

S. 92C : Transfer pricing – Arm's length price -Methods for determination of - Resale price method -International transaction is not that of purchase by an Indian entity, then RPM cannot be applied-Brand building expenses - Employees cost and operating and administrative expenses incurred for year in question and claimed as deduction in entirety in year alone could not be treated as Brand building expenses . [R. 10B(1)(b)]
Held that RPM applies where an Indian entity purchases goods from its foreign/AE and then resells same; if international transaction is not that of purchase by an Indian entity, then RPM cannot be applied .Where the assessee sold goods to its AE in international transaction rather than purchasing same, RPM could not be applied . Held that employees cost and operating and administrative expenses incurred for year in question and claimed as deduction in entirety in year alone could be treated as 'Brand building expenses' and correlated with sales to be made in future years without capitalizing them for accounting or tax purpose. (AY. 2012 -13, 2013 -14)
Save Medica Ltd. v. ACIT (2022) 217 TTJ 81 / 133 taxmann.com 503 (Pune)(Trib)

S. 92C : Transfer pricing – Arm's length price - Comparables, functional similarity - Least complex entity to a transaction should be adopted as a tested party- Composite set of books of account -Aggregation of transactions - Transfer pricing adjustment should be restricted only to international transactions . [S.92CA]
Held that only such an entity can be selected as a tested party, inter alia, whose functions are relatively simple vis-a-vis other entity and as a consequence thereof, in whose hands value of international transaction and/or PLI can be computed with relative ease requiring least adjustments . Assessee tried to show international transaction of availing RHQ services from foreign AE 'LS' at ALP by considering 'LS' foreign AE as a tested party Benchmarking of RHQ services by taking foreign AE as tested party was incorrect when said entity was neither a least complex entity to transaction nor was one for whom suitable comparables were available .
Assessee maintained a composite set of books of account with one Profit and loss account . Only for benchmarking its transactions, assessee divided its financials into separate segments . It was found that assessee made calculations of segment-wise profits in such a manner so as to reflect higher margin of profits under AE segments which required ALP determination and as against that, non-AE segment, which was prime source of assessee's revenue but did not require any benchmarking as it was de hors any AE transactions, had shown microscopic operating profit and, thus, it was a clear-cut case of artificial and highly manoeuvred segmental profitability - Whether on facts authorities below were justified in rejecting segregation approach adopted by assessee and rightly combined international transactions under overall 'manufacturing activity' for benchmarking .
Transfer pricing adjustment should be restricted only to international transactions and not entity level transactions . (AY. 2016-17)

Lear Automotive India (P) Ltd. v. Dy. CIT (2021) 133 taxmann.com 502 / (2022) 217 TTJ 440 (Pune)(Trib)

S. 92C : Transfer pricing – Arm's length price -AMP expenses - Adjustments – Not justified – Purchase -Imports - Gross margins of assessee were much more than gross margins of comparable companies chosen by TPO, no adjustment to ALP was to be made in respect of import of finished goods .[S.92CA]

Assessee is engaged in manufacturing and sales of breakfast cereals and convenience foods and it operated as a licensed manufacturer of ready to eat cereals . It incurred certain AMP expenditure . TPO held that efforts and expenditure incurred by assessee on AMP and market development on advice and guidance of its parent would constitute international transaction and made ALP adjustment in respect of AMP expenses incurred. Held that the assessee was not merely a distributor of products manufactured by its AE but assessee itself was manufacturing its own products in India under license from AE . There was no express arrangement/agreement between assessee and AE for incurring expenditure to promote brand of AE . Accordingly the ALP adjustment in respect of AMP expenditure could not be made when assessee incurred AMP expense with a view to market and promote its own manufactured products by making payments to third parties in India and there was no express arrangement/agreement between assessee and AE for incurring such expenditure to promote brand of AE . Assessee purchased pringles product from its AE based in Singapore Singapore AE did not manufacture pringles, but in turn got it manufactured from a third party contract manufacturer and thereafter, goods were supplied at a cost plus markup of 5 per cent on third party manufacturer's cost . These Pringles were later imported by assessee from its AE and distributed in Indian market . In Transfer Pricing (TP) study report, assessee characterised itself as a distributor of Pringles products and was responsible for strategic and overall management of Pringles business in India and on other hand, Singapore AE, being least complex entity, was selected as tested party for benchmarking international transaction of import of finished goods TPO disregarded benchmarking approach adopted by assessee and selected Indian entity as tested party .Held thatSingapore AE which was remunerated on mere cost plus markup basis and undertook only limited functions would be least complex entity and, therefore was rightly taken as tested party for assessee carrying on multiple functions and bearing significant entrepreneurial risk in India . Since gross margins of assessee were much more than gross margins of comparable companies chosen by TPO, no adjustment to ALP was to be made in respect of import of finished goods . (AY.2014-15)

Kellogg India (P) Ltd. v. ACIT (2022) 218 TTJ 914 / 139 taxmann.com 205 (Mum)(Trib)

S. 92C : Transfer pricing – Arm's length price -Guarantee commission - Yield spread approach – Adjustments made by the TPO was deleted .[S. 92CA]

Assessee gave corporate guarantees to Royal Bank of Scotland for foreign currency loan availed by its AEs . Assessee adopted yield spread approach to benchmark guarantee commission. TPO held that quote from Royal Bank of Scotland could not be a sound basis for computing interest differential as it was dated 1-4-2013, after end of relevant previous year and could not be applied for relevant assessment year. TPO ascertained ALP of corporate guarantee at 1.5 per cent by adopting quotations for bank guarantees from Indian banks. Held that if rate differential between current market interests for guarantor and

guarantee recipient was 70 bps at end of relevant previous year, it was reasonable to proceed on basis that such a differential would also prevail during relevant previous year and thus, benchmarking corporate guarantee at .35 per cent using yield spread approach was upheld . (AY. 2013-14)

Dy. CIT v. Sikka Ports & Terminals Ltd. (2022) 219 TTJ 159 / 219 DTR 75 / 140 taxmann.com 211 (Mum)(Trib)

S. 92C : Transfer pricing – Arm's length price – Corporate Guarantee Computation of commission at 0.5 percent- Justified [S. 92B]

The Tribunal held that there was no infirmity in the order passed by CIT (A) on the issue of computing of commission of corporate guarantee. (AY. 2010-11, 2011-12).

Dy. CIT v. S. Kumars Nationwide Ltd. (2022) 97 ITR 60 (S.N.) (Mum) (Trib)

S. 92C: Transfer pricing – Arm's length price – Interest on receivables- Reduction of credit period to 30 days from 90 days by Dispute Resolution Panel- Service agreement with associated enterprise amended to 90 days- TPO to consider 90 days- Matter Remanded. [S. 92B (1)]

The Tribunal held that the service agreement was amended to 90 days. Thus, the Transfer Pricing Officer was to consider the credit period of 90 days while determining the arm's length price afresh, after providing reasonable opportunity of being heard to the assessee. Matter remanded. (AY. 2015-16]

Outsourcepartners International Pvt. Ltd. v. ACIT (2022)97 ITR 22 (SN) (Bang) (Trib)

S. 92C : Transfer pricing – Arm's length price - Aggregation of transaction-justified in segregating international transaction of professional charges to be processed independent of other international transactions- Allowability of expenditure –Matter remanded . [S. 92CA]

TPO segregated international transaction of Professional charges and processed to determine its ALP independently . Tribunal held that transaction of payment of professional charges was not closely connected with other international transactions. On facts, TPO was justified in segregating international transaction of Professional Charges to be processed independent of other international transactions . Matter remanded . Since assessee could not produce evidence of availment of services to satisfaction of TPO, TPO held that no services were received and determined Nil ALP . Detailed e-mail communications between assessee and its AEs abundantly proved that AEs rendered services to assessee which assessee undoubtedly availed . Tribunal held that since no details about comparables of international transaction were either provided by assessee or taken note of by TPO, TPO was directed to determine ALP of international transactions of 'Professional Charges paid' afresh in accordance with law . Matter remanded. (AY. 2011-12)

Faurecia Automotive Seating India (P) Ltd. v. ACIT (2022) 220 TTJ 177 / 217 DTR 375 / 141 taxmann.com 126 (Pune)(Trib)

S. 92C : Transfer pricing – Arm's length price – Technical service fee -Relief granted for AY . 2004 -05 was not challenged – Addition was deleted. [S. 92CA]

Tribunal held that no ALP adjustment in respect of similar payments was made for assessment years 2001-02, 2002-03 and 2003-04 and that relief granted by Commissioner (Appeals) on this point when adjustments were made in assessment year 2004-05 had not been challenged . Adjustmnet was deleted . (AY. 2005-06)

SS Oral Hygine Products (P) Ltd. v. Dy. CIT (2022) 220 TTJ 939 / 145 taxmann.com 285 (Mum)(Trib)

S. 92C : Transfer pricing – Arm's length price - Engineering design services – Separate sehmental accounts – Adjustment made by TPO was deleted . [S. 92CA]

Held that segmental profitability as determined by assessee was correct as per which OP/OC from services to AE at 18.04 per cent was better than OP/OC from non-AE services at 13.44 per cent showing international transaction at ALP .Adjustment made was deleted . (AY. 2016-17)

Neilsoft (P) Ltd. v. Dy. CIT (2022) 209 DTR 225/ 215 TTJ 545 / 136 taxmann.com 66 (Pune) (Trib)

S. 92C : Transfer pricing – Arm's length price – Manufacturing of compressors and mining & production tools -Four types of cost - TPO was not justified in considering only two expenses, namely, manufacturing and marketing as contributing to earning of profits. [S. 92CA]

Held that when there were four types of costs incurred by assessee, namely, material consumption, manufacturing expenses, administrative selling and distribution expenses and depreciation, TPO was not justified in considering only two expenses, namely, manufacturing and marketing as contributing to earning of profits. TPO ought to have considered material cost and depreciation contribution to generation of income from manufacturing activity in same way as he considered manufacturing and marketing costs - Addition made by TPO was to be deleted. (AY. 2012-13)

Dy.CIT v. Atlas Copco (India) Ltd (2022) 213 DTR 1/ 217 TTJ 231/ 141 taxmann.com 192 (Pune)(Trib)

S. 92C : Transfer pricing – Arm's length price - Captive power plants – Eligible business - State Electricity Board (SEB) - Transaction of transfer of power in Rajasthan from eligible unit to non-eligible unit should be benchmarked at purchase price of power from SEB - Steam cannot be determined at nil . [S. 80IA 92BA]

There was transfer of power from its captive power plants (eligible business for deduction under section 80-IA) to other non-eligible businesses . TPO adopted Indian Energy Exchange (IEX) rates for purpose of benchmarking transaction of sale of power by Kota eligible unit to non-eligible unit . Claim of assessee was that price at which assessee had purchased power from SEB was internal CUP and, therefore, those prices were to be preferred over any external CUP price i.e. average price of IEX and price at which it had purchased power in Rajasthan . Tribunal held that since rates of SEB compared with rates of IEX clearly showed that there was a wide disparity between two rates and SEB in Rajasthan was supplying power to majority of consumers using electricity, much sanctity was attached to rates adopted by SEBs and IEX rates could not be said to be an external CUP available for invoking provisions of first proviso to section 92C(2) . Therefore, transaction of transfer of power in Rajasthan from eligible unit to non-eligible unit should be benchmarked at purchase price of power from SEB .

Held that steam has a cost and arm's length price of steam cannot be determined at nil .Value of steam can be expressed in terms of equivalent units of electricity that would have been generated and such value is usually higher than cost of steam . (AY. 2014 -15))

DCM Shriram Ltd. v. Addl CIT (2022) 215 TTJ 299 / 212 DTR 201 / 140 taxmann.com 217 (Delhi)(Trib)

S. 92C : Transfer pricing – Arm's length price -Guarantee commission fee of 1 percent – Held to be reasonable – Followed order of earlier year – Share capital – Adjustment of interest to be made with other loans giving similar privilege- Business eexpenditure - TPO only has to ascertain arm's length price of a transaction and it is not TPO's job to decide whether a business enterprise should have incurred a particular expense or not . [S. 37(1) , 92CA]

Tribunal held that in assessee's own case in earlier years a co-ordinate bench had approved 1 per cent as reasonable guarantee commission, there was no reason to disturb corporate guarantee commission rate adopted by assessee . Tribunal held that since consideration for having given loan was, opportunity and privilege of owning capital of borrower on certain favourable terms, if at all comparison of this transaction was to be done with other loan transaction, comparison should have been done with other loans giving similar privilege and opportunity to lender and, therefore, very foundation of impugned ALP adjustment being devoid of any legally sustainable basis, such ALP adjustment was to be deleted . Tribunal also held that TPO only has to ascertain arm's length price of a transaction in sense that if same transaction was to be incurred between unrelated parties as to what would theoretically have been an arm's length price of transaction in question, and that exercise is to be carried out on basis of a permissible method of ascertaining arm's length price of a transaction; whether transaction should have taken place or not is not any of TPO's business . The very foundation of action of TPO is, thus, devoid of legally sustainable merits and, therefore, impugned ALP adjustment was to be deleted. (AY. 2012 -13 , 2013 -14)

Cadila Healthcare Ltd. v. Dy. CIT (2021) 133 taxmann.com 500 / (2022) 216 TTJ 656 (Ahd)(Trib)

S. 92C : Transfer pricing – Arm's length price -Failure to place verifiable information – Justified in rejecting as tested party – Turnover filter - Difference in turnover is not substantial – Cannot be excluded – Adjustment should be restricted only to international transactions and not entity level transactions.[S.92CA]

Held that since neither foreign AEs were least complex nor could assessee place before TPO relevant and verifiable information of foreign AEs and comparables for enabling him to determine ALP of transaction, A.O. was fully justified in rejecting foreign AE as tested party and adopting assessee itself as a tested party . Where difference in turnover of assessee and selected company was not as substantial as was considered germane for exclusion, said company could not be excluded on this count particularly when assessee had not disputed otherwise functional and other similarities with said company . Transfer pricing adjustment should be restricted only to international transactions and not entity level transactions .Matter remanded. (AY. 2014 -15)

A Raymood Fasteners India (P)Ltd. v. Dy. CIT (2022) 215 TTJ 228 / [2022] 134 taxmann.com 145 (Pune) (Trib)

S. 92C : Transfer pricing – Arm's length price – Comparable - Negative margin – Comaprable - Segmental details relating to various segments were not available- - Sale of software license- Segmental details relating to revenue earned were not discernible- Could not be selected as comparable . [S. 92CA]

Assessee rendered software development services to its AE . Where selected companies had reported negative margin in impugned assessment year, they could not be considered as incomparable, particularly when in preceding two years, they had reported positive profit margin . Held thatwhere selected company was engaged in sale of software products and software services and segmental details relating to various segments were not available, said company could not be selected as comparable . Where selected company had reported sale of software license, this company could not be considered as a comparable to a software development service provider. Where selected company reported revenue from software development services as well as business process outsourcing (BPO) services and segmental details relating to revenue earned were not discernible from annual report, it could not be included in list of comparables .(AY. 2013-14)

Norton Lifelock Software Solution (P) Ltd. v. ACIT (2022) 215 DTR 279 / 220 TTJ 527 / 135 taxmann.com 247 (Mum)(Trib)

S. 92C : Transfer pricing – Arm's length price – Adjustmnet of management fee- Disallowed under section 40(a)(i)- Disllaowing the same for Transfer pricing adjuustmnet will lead to taxing the same amount twice – Addition was delted .[S. 40(a)(i), 154]

Assessing Officer by passing the rectification order under section 154 made disallowance including service tax under section 40(a)(i) for same services Said disallowance was accepted by assessee and same had attained finality . Commissioner (Appeals) held that provisions of section 40(a)(i) and section 92CA(3) would operate simultaneously and were not contradictory to each other. On appeal the Tribunal held that if interpretation sought to be taken byCommissioner (Appeals) would be accepted, then assessee would be fastened with liability to pay taxes on same amount twice within same assessment year . Addition was deleted . (AY. 2010-11, 2011-12 , 2012-13)

McCain Foods India (P) Ltd. v. ACIT (2022) 215 DTR 148 / 218 TTJ 393 / 141 taxmann.com 164 (Delhi)(Trib)

S. 92C : Transfer pricing – Arm's length price - Technical assistance received - Order of CIT (A) giving relief was not challenged – Addition was deleted.

Held that it was found that no ALP adjustment in respect of similar payments was made for assessment years 2001-02, 2002-03 and 2003-04 and that relief granted by Commissioner (Appeals) on this point when adjustments were made in assessment year 2004-05 had not been challenged. Addition was deleted . (AY. 2005-06)

SS Oral Hygine Products (P) Ltd. v. Dy. CIT (2022) 219 DTR 225 / 220 TTJ 939 / 145 taxmann.com 285 (Mum)(Trib)

S. 92C : Transfer pricing – Arm's length -Commercial expediency of expenditure – No separate adjustment is required to be made .

Held that accrual of benefit to assessee or commercial expediency of any expenditure incurred by assessee could not be basis for disallowing same. Once margin of profit in distribution segment had been accepted after consideration of management fees, then there was no question of making any separate adjustment insofar as payment of management fees was concerned .Therefore, TPO was not justified in making adjustment in respect of international transaction of Payment of Management Fees. (AY. 2011-12).
Trimble Solutions India (P) Ltd. v. ITO (2022) 217 DTR 257 / 219 TTJ 659 / 141 taxmann.com 331 (Mum)(Trib).

S. 92C : Transfer pricing – Arm's length price -Aggregation -
Aggregation is not a rule of blind application and it is to be applied in certain situations and there has to be a scientific or rational basis for adoption; unless characteristic of 'closely-linked' is satisfied, aggregation is not possible -Matter remanded .

Held that the aggregation is not a rule of blind application, it is to be applied in certain situations and there has to be a scientific or rational basis for adoption; unless characteristic of 'closely-linked' is satisfied, aggregation is not possible. It is assessee who must prove or at least present facts and data before TPO/Assessing Officer by which it can be proved that there is a situation of 'closely-linked' transactions and aggregation is necessary. In instant case the assessee had not explained any scientific or convincing reason for aggregation and annual averaging of prices except that arithmetical calculation favoured assessee, assessee must be given an opportunity to prove justification for application of aggregation-theory . (AY. 2011-12 , 2012-13).
Dy. CIT v. Gujarat Microwax (P) Ltd. (2022) 216 DTR 65 / 218 TTJ 432 / 142 taxmann.com 357 (Ahd)(Trib).

S. 92C : Transfer pricing – Arm's length price – Manufacture and assembly- Comparable - Company passed turnover filter but fails to pass functional analysis- Department's appeal to remand the matter not justified and entertained- Addition was deleted [S.92CA]
The Tribunal held that the turnover filter the company could be compared, but the company did not pass the functional analysis as it was functionally dissimilar being a manufacturer of voltage panels and was liable to be excluded from the list of comparables. (AY. 2016-17)
Aggressive Digital Systems Pvt. Ltd v. ITO (2022)97 ITR 687 (Delhi)(Trib)

S. 92C : Transfer pricing – Arm's length price – Comparables - Software development and services and Information Technology - - Outsourcing model of business- -Company merged with two other companies, growth of revenue increased- Not to included in the list of comparables.
The Tribunal held that assessee was involved in in Information Technology enabled services different from companies in list of comparables. Hence, companies were to be excluded from the list of comparables. (AY.2008-09)
Agilent Technologies (International) Pvt. Ltd. v. ACIT (2022)97 ITR 326 (Delhi) (Trib)

S. 92C: Transfer pricing – Arm's length price – Comparable uncontrolled price method- Interest earned on loan to associated enterprise- Justified in deleting addition . [S.92CA]

The Tribunal held that since the issue was already covered by the Tribunal in the assessee's own case and the Department had failed to suggest any exception on facts or law involved in the assessment year under consideration, the detailed reasoning given by the Tribunal was to be adopted. (AY. 2014 -15)
ACIT v. Manaksia Ltd. (2022)97 ITR 433 (Kol) (Trib)

S. 92C: Transfer pricing – Arm's length price – Fee for Corporate guarantee from associated enterprise- Source of TPO for figuring out that asessee issued corporate guarantee not clear- Additions deleted by CIT (A) is justified. [S.92CA]

The Tribunal held that it was not clear from where and how the Transfer Pricing Officer had figured out that the assessee had issued corporate guarantee for its associated enterprise The addition made was arbitrary, not backed by any evidence Therefore, Additions deleted by CIT (A) justified. (AY. 2014 -15)
ACIT v. Manaksia Ltd. (2022)97 ITR 433 (Kol) (Trib)

S. 92C : Transfer pricing – Arm's length price – Transactional Net Margin Method- Assessee in the business of ship chartering services- Rules required Transactional Net Margin Method with respect to net profit margin- Assessee using internal comparables with associated enterprises- Incorrect approach- Revenue authority justified in rejecting methodology. [R. 10B(1)(e)]
The Tribunal held that the transactional net margin method was required to be computed with respect to the net profit margin only. The Rules did not support the computation of the gross profit margin while applying transactional net margin method. Therefore, the benchmarking methodology adopted by the assessee taking the gross profit margin was correctly rejected by the Revenue authorities. (AY.2007-08)
ACIT v. United Shippers Ltd. (2022) 97 ITR 94 (Mum) (Trib)

S. 92C : Transfer pricing – Arm's length price –Profit margin to be applied only on international transactions. [S.92CA]
The Tribunal held that CIT (A) erred in applying profit level indicator on assessee's total sale instead of applying only to international transactions. Therefore, the profit margin had to be applied only on international transaction.(AY.. 2007 -08)
ACIT v. United Shippers Ltd. (2022) 97 ITR 94 (Mum) (Trib)

S. 92C : Transfer pricing – Arm's length price – Comparables- Business of Information Technology enabled services- Extraordinary event of amalgamation- Company to be excluded- Company earning income from associated enterprise- more than 25% of its total revenue- To be excluded- Company having very high turnover is to be excluded. [S. 144C(5)]
The Tribunal held that if an extraordinary event had taken place by way of amalgamation, then that company could not be considered as a comparable. The company earned more that 25% of its revenue from related party transactions. The company could not be considered. The turnover of comparable company was 80 times more than the assessee, hence, the company could be considered in the list of comparables. (AY. 2015 -16)
Entercoms Solutions P. Ltd. v. ACIT (2022)97 ITR 135 (Pune) (Trib)

S. 92C : Transfer pricing – Arm's length price – Transactional net margin method- Comparables- Assessee engaged in business of software development service and Information Technology service- Company with turnover of more that 200 crores- Company having less than 75% revenue from software development services- Company providing high end services- To be excluded- Profit level indicator- Assessee depreciating at a higher rate than comparables- Margin to be adopted after excluding depreciation- Resale Price Method- Rejection of assessee's application for resale price method- TPO to consider application as per transfer pricing study- Matter Remanded.[S.92CA]

The Tribunal held that the companies selected by the TPO were from different verticals and functioning lines. The Tribunal dismissed the Department's appeal. That the Tribunal in the assessee's own case for the assessment year 2009-10 had directed the Assessing Officer to compute the margin in respect of the comparables and the assessee after excluding the depreciation from the cost. The facts being the same as in the assessment year 2009-10, there was no infirmity in adopting the consistent view in computing the margin in respect of the comparables after excluding the depreciation from the cost. The Tribunal remanded the matter and held that the assessee was to provide all relevant information and evidence to substantiate its claim and proper opportunity of being heard must be granted to the assessee in accordance with law. (AY.2011-12)

ITO v. Micro Focus Software India Pvt. Ltd. (2022)97 ITR 1 (Bang) (Trib)

S. 92C : Transfer pricing – Arm's length price –Interest-Free Advances — Issue of shares against loan not been made during year — Transfer pricing adjustment in respect of interest-free advances to Associated enterprises proper — Transfer Pricing Officer to ascertain applicable Libor during year and make adjustment.[S.92CA]

Held that the Tribunal in the assessee's own case for the assessment year 2012-13, held that the transfer pricing adjustment on interest-free advances was proper and restored the issue of computation of transfer pricing adjustment, to the Assessing Officer/Transfer Pricing Officer with a direction to examine the claim of the assessee considering the decisions relied on by the assessee. The assessee had filed additional evidence for conversion of loan to shares subsequent to the year but since the issue of shares had not been made during the year, the additional evidence filed was not relevant. The action of the Assessing Officer/the Transfer Pricing Officer in making transfer pricing adjustment in respect of interest-free advances to its associated enterprises was proper. However, the Transfer Pricing Officer shall ascertain the applicable LIBOR during the year under consideration and make the adjustment. (A.Y. 2013-14)

United Spirits Ltd v. Dy. CIT (2022)97 ITR 272 (Bang) (Trib)

S. 92C : Transfer pricing – Arm's length price – Corporate guarantee to associate enterprise- Transfer Pricing adjustment to be restricted to 0.5% of corporate guarantee.

The Tribunal held that the the Transfer Pricing Officer was to restrict the transfer pricing addition on corporate guarantee to 0.5% of the corporate guarantee. (AY. 2013-14)

United Spirits Ltd v. Dy. CIT (2022)97 ITR 272 (Bang) (Trib)

S. 92C : Transfer pricing – Arm's length price- Purchase of raw material from associate enterprise- Assessee denied opportunity of hearing before Dispute Resolution Panel- Order set aside and remanded.[S.92CA]

The Tribunal held that assessee was not allowed sufficient opportunity of hearing. The transfer pricing adjustment was to be set aside and the issue restored to the Assessing Officer/the Transfer Pricing Officer for proper consideration after allowing sufficient opportunity of hearing to the assessee. (AY. 2013-14)

United Spirits Ltd. v. Dy. CIT (2022)97 ITR 272 (Bang) (Trib)

S. 92C : Transfer pricing – Arm's length price - Comparables — Payment of royalty - Receipt of commission for Marketing Services- Addition was deleted following the order of earlier year. [S.92CA]

Tribunal following the order of earlier years the addition was deleted . (AY. 2010-11 , (AY. 2011 -12)

Dy.CIT v. Atlas Copco (India) Ltd (No .1) (2022) 96 ITR 520 (Pune)(Trib)

Dy. CIT v. Atlas Copco (India) Ltd (No .2) (2022) 96 ITR 566 (Pune)(Trib)

S. 92C : Transfer pricing – Arm's length price - Comparables — Software Development Service Provider — Companies having turnover in excess of Rs. 200 Crores not comparable — Companies having multiple segments cannot be compared with captive service providers. [S.92CA]

The Tribunal, in the present case, where the turnover of the assessee was compared with companies having substantially higher turnovers and by leaving out companies with lesser turnovers, introduced an upper limit for the turnover of the comparables. The Transfer Pricing Officer had excluded companies having turnover of less than Rs.1 crore, but he had not put an upper limit to the turnover for exclusion of companies having high turnover. Companies having very high turnover could not be compared to the assessee, whose turnover was only Rs. 42.56 crores. The turnover of IL was Rs. 43,300 crores, which was a thousand times more than the turnover of the assessee. Therefore, IL could not be compared to the assessee. Hence, the authorities were directed to exclude IL from the list of comparables. The other companies sought to be excluded on the turnover filter were restored to the Transfer Pricing Officer who was to verify the turnover of those companies and exclude them from the list of comparables if the turnover of each company exceeded Rs. 200 crores for the relevant. (AY. 2015-16)

Arista Networks India P. Ltd. v. Dy. CIT (2022)96 ITR 505 (Bang) (Trib)

S. 92C : Transfer pricing – Arm's length price - Comparables - Certification services — Royalty — Only when combined approach not accepted there could be a separate benchmarking of payment towards royalty — Matter remanded . [S. 92CA]

Tribunal held that where foreign exchange loss was considered as operating expenses by the Transfer Pricing Officer and accordingly, he computed the arm's length price, making a consequent addition to the total income on account of the determination of arm's length price., the Tribunal held that the Tribunal on the issue with regard to certification services had remitted the question of determination of arm's length price to the Assessing Officer/Transfer Pricing Officer in the AY 2009-10. Therefore, the issue was remitted for determination of the arm's length price of the international transaction of rendering certification services by the assessee to its associated enterprise. Only when combined

approach not accepted there could be a separate benchmarking of payment towards royalty . Matter remanded . (AY. 2010-11, 2011-12)

Ul India Pvt. Ltd. v. Dy. CIT (2022)96 ITR 191 (Bang)(Trib)

S. 92C: Transfer pricing – Arm's length price - Comparables — Assessee Engaged In Offshore Information Technology Enabled Services — Not to be included in list of comparables — Company having different financial year — Results of company for relevant financial year could be carved out — To be included in list of comparables — Working Capital Adjustment — Allowable on actual basis without any restriction.

The Tribunal held that Company providing onsite Information Technology Enabled Services, having High-End Consultancy Services, company being Product Development Company with presence of Intellectual Property Rights and with Related Party Transactions of more than 25 Per Cent., Company engaged In Diverse Functions but No Segmental Data Available, Company Having Huge Brand Name And Owning Significant Intangibles, Company Engaging In Knowledge Process Outsourcing are not to be included in the list of comparables. It was further held that although a company had a different financial year, the results of this company for the relevant financial year as that of the assessee could be carved out, and in such an event, this company which was otherwise comparable should be regarded as a comparable company. (AY. 2010-11, 2011-12)

U.L. India Pvt. Ltd. v Dy. CIT (2022)96 ITR 191 (Bang)(Trib)

S. 92C: Transfer pricing – Arm's length price -Having high turnover — Turnover is a relevant criterion for choosing comparable [R. 10B]

In the matter where the Dispute Resolution Panel excluded uncontrolled comparables having turnover more than Rs. 200 crores in the absence of turnover criterion prescribed in rule 10B of the Income-tax Rules, 1962, and there is no correlation between turnover and profit margin, it was held that the turnover was a relevant criterion for choosing comparable companies. (AY. 2010-11, 2011-12)

U.L. India Pvt. Ltd. v. Dy. CIT (2022)96 ITR 191 (Trib)(Bang) (Trib)

S. 92C: Transfer pricing – Arm's length price - Related party transactions — Threshold limit for applying related party transaction filter should Be 15 Per Cent. or 25 Per Cent. depending upon the availability of comparable companies.

In the matter where the Revenue submitted that the Dispute Resolution Panel erred in applying zero per cent. related party transaction. The order of the Dispute Resolution Panel was in itself contradictory since it had discussed why zero per cent. related party transactions should not be taken. On the other hand, it directed the Transfer Pricing Officer to adopt the same; it was held that the law is well-settled that the threshold limit for applying the related party transactions filter is 15 per cent or 25 per cent depending upon the availability of comparable companies. (AY. 2010-11, 2011-12)

U.L. India Pvt. Ltd. v .Dy. CIT (2022)96 ITR 191 (Bang) (Trib)

S. 92C: Transfer pricing – Arm's length price - Change in method of revenue recognition deferring recognition of revenue — Assessing Officer to give consequential relief in year in which revenue deferred was offered to tax. [S. 145]

The Tribunal held that with regard to the change in the method of revenue recognition deferring the recognition of revenue, the Assessing Officer should give consequential relief in the year in which the revenue deferred was offered to tax to ensure that there was no double taxation. (AY. 2010-11, 2011-12)

U.L. India Pvt. Ltd. v. Dy. CIT (2022)96 ITR 191 (Bang)(Trib)

S. 92C: Transfer pricing – Arm's length price - Fees for managerial services —No evidence of nature of services rendered - Transfer Pricing adjustment required for consideration paid for services. [S. 92CA]

The Tribunal held that the assessee had made periodical payment to its associated enterprises in the guise of managerial fee without any justification therefor. Such payment of fees had to be examined qua the evidence without going into the aspect of the operating margin of the assessee and the transfer pricing study conducted for that purpose. There was no error in the reasons given by the Transfer Pricing Officer and the Dispute Resolution Panel in making a transfer pricing adjustment for the assessee's payment of managerial service fees to the associated enterprises. (AY. 2012-13, 2013-14)

Lite-On Mobile India Pvt. Ltd. v. Dy. CIT (2022)96 ITR 352 (Chennai) (Trib)

S. 92C: Transfer pricing – Arm's length price – Net margin method - Support services to its associated enterprises — Transfer Pricing Officer discarding transactional net margin method adopted by assessee and accepted by Department for several years without assigning any specific reason — Held to be not proper. [S.92CA]

The Tribunal held that the Transfer Pricing Officer might discard the search process or the comparables used by the assessee but could not discard the method which was accepted by the Revenue since the AY 2009-10 onwards. Before adopting the "other method" the Transfer Pricing Officer had to give reason for discarding the five methods mentioned in the rules, but the order of the Transfer Pricing Officer or the Assessing Officer or the Dispute Resolution Panel were devoid of such finding. The Dispute Resolution Panel had put the onus on the assessee whereas the onus lay on the Transfer Pricing Officer to justify the adoption of "other method" as the most appropriate method and not on the assessee. Further, the comparables used by the Transfer Pricing Officer and accepted by the Dispute Resolution Panel related to the payment of royalty relating know-how, patent and process technology and therefore, such comparables could not be accepted on the business profile of the assessee. The lower authorities should have accepted the transactional net margin method as the most appropriate method on the business profile qua the international transaction of the assessee as was accepted in the AYs 2009-10 to 2014-15. (AY. 2016-17)

Sabic India Pvt. Ltd. v Dy. CIT (2022)96 ITR 368 (Trib)(Delhi) (Trib)

S. 92C: Transfer pricing – Arm's length price - Comparables — Companies with turnover in excess of Rs. 200 Crores — Not comparable.

The Tribunal held that the Transfer Pricing Officer had excluded companieshaving turnover of less than Rs. 1 crore but did not put an upper limit to the turnover for exclusion of companies having high turnover. High turnover companies could not be compared to the

assessee. The Transfer Pricing Officer was directed to exclude companies having turnover in excess of Rs. 200 crores. (AY. 2014-15)

Xchanging Solutions Ltd. v .Dy. CIT (2022)96 ITR 544 (Bang) (Trib)

S. 92C: Transfer pricing – Arm's length price — Software development services — Working capital adjustment on account of outstanding receivables — Matter remanded . [S.92CA]

Held that the Transfer Pricing Officer had re-characterised the trade receivables from associated enterprises as loan given to the associated enterprises and imputed interest on the average trade receivables during the year for a period of 335 days. However in the assessee's own case for AY 2008-09, the Tribunal had directed the Transfer Pricing Officer to determine the arm's length price afresh in respect of provision of software development services by reckoning the proper working capital adjustment in the comparable prices and, if the international transaction was found to be at arm's length, not to make a separate adjustment on account of allowing a credit period for the receivables due from the associated enterprises. The Transfer Pricing Officer was directed to re-do the transfer pricing analysis in respect of interest on outstanding receivables in terms of the Tribunal's directions. (AY. 2014-15)

Xchanging Solutions Ltd. v. Dy. CIT (2022)96 ITR 544 (Bang) (Trib)

S. 92C: Transfer Pricing — Arm's Length Price — Comparables —Government of India Company not Comparable with Assessee — Excluded from List of Comparables. [S.92CA]

Held that this a Government of India company and was not comparable with the assessee company, which was a purely private company as a government company was not driven by the profit motive alone. Thus, it was not comparable. The Assessing Officer/Transfer Pricing Officer was to exclude this company from the list of comparables in respect of the business support services segment. (AY. 2011-12)

Dy. CIT v. Bmc Software (India) Pvt. Ltd. (2022)96 ITR 18 (SN) (Pune) (Trib)

S. 92C: Transfer Pricing — Arm's Length Price- Manufacturing and marketing - Transactional Net Margin Method most appropriate - Transfer Pricing Officer's Reasoning of constructing a hypothetical comparable uncontrolled price based on study of third party scenario is not envisaged [S.92CA]

The Tribunal held that the Transfer Pricing Officer's reasoning of constructing a hypothetical comparable uncontrolled price based on the study of third-party scenario was not envisaged as per the benchmarking exercise laid out in rule 10B. The Tribunal held that since centralised information technology services of the total group were distributed among all divisions, subsidiaries and associates who used this facility, the basis of cost allocation was reasonable and could not be faulted. (AY. 2011-12 to 2013-14)

Bostik India P. Ltd. v. Dy. CIT (2022)96 ITR 25 (SN) (Bang) (Trib)

S. 92C : Transfer pricing – Arm's length price -Custom duty – Recovering part from customers – Adjustments required to be made . [R. 10B(1)(b)(iv)]

The Tribunal held that rule 10B(1)(b)(iv) of the Income-tax Rules, 1962 provides that adjustments can be made to take into account the differences between the controlled and uncontrolled transactions that are likely to materially affect the price or cost or profit. The contention of the assessee that suitable adjustments should be made to iron out the differences of profit between the profit of tested company and the comparables was sustainable. On this score, there was no illegality in the order of the Commissioner (Appeals). It further held that the Assessing Officer/Transfer Pricing Officer was to make adjustments to the margins earned by the comparables instead of the margins of the assessee. (AY. 2013-14)

Dy. CIT v. India Kawasaki Motors Pvt. Ltd. (2022) 96 ITR 37 (SN) (Pune) (Trib)

S.92C: Transfer pricing – Arm's length price -Technical Know-how fees —Not adopting one of mandatorily prescribed methods- Deletion of addition is valid .
The Tribunal held that the finding of the Commissioner (Appeals) that the assessee had availed of technical services from its associated enterprises was not in dispute. The Assessing Officer could not question the necessity of incurring of the expenditure on technical services, as that was within the exclusive domain of the assessee. Not adopting one of the mandatorily prescribed methods to determine the arm's length price in respect of fees for technical services, made the entire transfer pricing study was unsustainable in law. There was no illegality in the order of the Commissioner (Appeals) (AY. 2013-14)

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Dy. CIT v. India Kawasaki Motors Pvt. Ltd. (2022) 96 ITR 37 (SN) (Pune) (Trib)

S. 92C : Transfer pricing – Arm's length price -Royalty — Transactions Valued at Nil ignoring evidence brought on record — Transfer Pricing Adjustment is not sustainable .[S.92CA]

The facts and circumstances of the case at hand were identical to the facts of the assessee's own case for the assessment year 2005-06 and since the assessee had not undergone any change in the business model, the decision of the Tribunal for the assessment year 2005-06 in the assessee's favour was to be followed. The Tribunal held that the Transfer Pricing Officer had erred in treating the value of the transaction as nil by ignoring the evidence brought on record by the assessee. The Commissioner (Appeals) had considered the facts and the law applicable thereto by examining the entire evidence on record and deleted the addition. There was no illegality or perversity in the order passed by the Commissioner (Appeals). (AY. 2006-07)

Expeditors International (India) Pvt. Ltd. v. Dy. CIT (2022) 95 ITR 393 (Delhi)(Trib)

S. 92C : Transfer pricing – Arm's length price - Working capital adjustment — No expenses incurred for Meeting working capital requirement — Question of adjustment on negative working capital does not arise- — Selection of comparables — Assessee engaged in provision of software development and related services — Rejection of rental expenses held to be proper. [S. 92CA]

The Tribunal held that Companies having Composite Data of Revenue and Margins of company pertaining to sale of software services and products, companies engaged in diversified activities and earning revenue from various activities and no segmental data available, companies not passing Employee Cost Filter, cannot be taken as comparable. It further that the working capital adjustment was made for the time value of money lost when credit time was given to the customers. The assessee was a captive service provider entirely funded by its associated enterprise and had no working capital contingencies. The assessee had not incurred any expenses for meeting the working capital requirement and was running the business without any working capital risk. The assessee did not bear any market risk as the services were provided only to its associated enterprises. Therefore, the requirement for adjustment of negative working capital did not arise. The Tribunal held that companies Having Composite Data Of Revenue And Margins Of Company Pertaining To Sale Of Software Services And Products, Companies Engaged In Diversified Activities And Earning Revenue From Various Activities And No Segmental Data Available, Companies Not Passing Employee Cost Filter, Cannot Be Taken As Comparable. It was held for the claim to deduction towards provision for rental expenses based on the possibility of increase in rental expenses, the assessee had not given any basis for its anticipated liability towards rental expenses nor had it quantified the basis of arriving at the anticipated liability . (AY.2011-12)

Harman Connected Services Corporation India P. Ltd. v. Dy. CIT (2022)95 ITR 1 (Bang)(Trib)

S. 92C: Transfer pricing – Arm's length price - Manufacturing segment — Under-Utilisation of capacity —Working capital adjustment - Foreign Exchange gain erroneously treated as Foreign Exchange Loss and included as part of cost — Payment made for group services - Mistake in treating the foreign exchange gain as foreign exchange loss and including it as part of cost was a computational mistake, required to be corrected in order to arrive at the correct margin- It was also held that *the* transfer pricing adjustment to the sales made to associated enterprises, under the transactional net margin method was required to be restricted to international transactions only .[S. 92CA]

The Tribunal held that with regard to adjustment made towards under-utilisation of capacity for the manufacturing segment, the assessee had utilised only 41 per cent. of its installed capacity during the year. Though the assessee had not mentioned about the capacity utilisation achieved by the comparable companies, the assessee should be allowed capacity utilisation adjustment. The Tribunal held that the claims with regard to payment made for group services were interlinked with each other, and the issues were to be restored to the Assessing Officer/Transfer Pricing Officer for examination afresh. The Tribunal held that that with regard to the error in computation of the net margin on cost of comparable companies, the claim of the assessee that the Transfer Pricing Officer had computed the net margin on cost of comparables as 8.16 per cent. while the actual margin worked out to 9.10

per cent. required verification. The Tribunal held that the issue with regard to disallowance of working capital adjustment was restored to the file of the Assessing Officer/Transfer Pricing Officer with the direction to allow working capital adjustment on actual basis. It was further held that the mistake in treating the foreign exchange gain as foreign exchange loss and including it as part of cost was a computational mistake, required to be corrected in order to arrive at the correct margin. It was also held that *the* transfer pricing adjustment to the sales made to associated enterprises, under the transactional net margin method was required to be restricted to international transactions only. (AY.2009-10)

SKF Engineering and Lubrication India Pvt. Ltd. v Dy. CIT (2022)95 ITR 24 (Bang)(Trib)

S. 92C : Transfer pricing – Arm's length price -Adjustment made in respect of international transaction on purchase of traded goods- Comparable – Adjustment was deleted .

Held that valuation adopted by the assessee of comparable company is in accordance with generally accepted accounting principles and in consonance with accounting standards issued by ICAI which are mandatorily to be followed by every corporate in India . Transfer Pricing adjustment was directed to be deleted . (AY. 2014 -15)

B. Braun Medical (India) Pvt Ltd v. Dy.CIT (2022) 95 ITR 72 (SN) (Mum)(Trib)

S. 92C : Transfer pricing – Arm's length price -Comparables — Working capital adjustment - Interest on outstanding receivables . Matter remanded

Held that the Transfer Pricing Officer had not examined the remaining three companies also. All these companies were functionally comparable with the activities carried on by the assessee. Accordingly, all these companies needed to be examined by the Transfer Pricing Officer. Held that working capital adjustment was required to be made in order to determine the arm's length price of the transaction. Interest on outstanding receivables matter remanded .(AY.2016-17)

Netapp India Marketing and Services Pvt. Ltd. v. ACIT (2022)95 ITR 91 (SN)(Bang) (Trib)

S. 92C : Transfer pricing – Arm's length price - Corporate guarantee -Matter remanded [S.92B]

Held that the provision of corporate guarantee constitutes an international transaction. As the Transfer Pricing Officer had rejected the combined benchmarking analysis conducted by the assessee and did not consider the transaction as an international transaction, as claimed by the assessee, and benchmarked it accordingly, the matter had to be remanded to the Transfer Pricing Officer only to benchmark the transaction of payment for corporate guarantee fees as an international transaction.(AY.2013-14)

Peri (India) Pvt. Ltd. v. Dy. CIT (2022)95 ITR 3 (SN)(Mum) (Trib)

S. 92C : Transfer pricing – Arm's length price -— Most Appropriate Method — Cost Plus Method- Direction to benchmark international transactions adopting cost plus method .[S.92CA]

Held that the cost plus method had been accepted by the Department since the year 2002-03 as well as in the subsequent year, i. e., assessment year 2013-14. It was not the case of the Department that there was difference in facts warranting a different view in the current assessment year regarding the selection of the most appropriate method for the purpose of benchmarking the international transactions. Therefore, the authorities were not justified in rejecting the cost plus method adopted by the assessee for the purpose of benchmarking the international transactions in the absence of difference in the facts of the case. [Matter remanded to Assessing Officer with direction to compute the arm's length price of the international transactions adopting the cost plus method as the most appropriate method de novo after affording due opportunity of being heard to the assessee.*(* AY.2012-13)

Thyssenkrupp Electrical Steel India Pvt. Ltd. v. ACIT (2022)95 ITR 48 (SN)(Pune)(Trib)

S. 92C : Transfer pricing – Arm's length price -Comparables —Giant risk taking company engaged in development and sale of software products and owns intangible assets — Company engaged in product development and earning revenue from trading of software licences and subscription — Not to be included in list of comparables. [S.92CA]

Held that giant risk taking company engaged in development and sale of software products and owns intangible assets . Company engaged in product development and earning revenue from trading of software licences and subscription, not to be included in list of comparables.*(* AY.2007-08)

Alcatel Lucent India Ltd. v. Dy. CIT (2022)95 ITR 314 (Delhi) (Trib)

S. 92C : Transfer pricing – Arm's length price - Comparables —Turnover more than Rs. 200 Crores to be excluded from list of comparables -Functionally similar companies cannot be excluded from list of comparables - — Working capital adjustment -Directed to examine as per OECD guidelines- — Interest on delayed realisation of trade receivables - Prime lending rate not to be considered for determining interest rate — Matter remanded. [S. 92CA]

Held that companies whose turnover in the current year was more than Rs. 200 crores were to be excluded from the list of comparable companies. Functionally similar companies cannot be excluded from list of comparables . Working capital adjustment is directed to examine as per OECD guidelines. As regards interest on delayed realisation of trade receivables , prime lending rate not to be considered for determining interest rate . Matter remanded . *(* AY.2016-17)

Barracuda Networks India P. Ltd. v .Dy. CIT (2022)95 ITR 350 (Bang) (Trib)

S. 92C : Transfer pricing – Arm's length price -Working capital adjustment permissible for better comparability [S.92CA, R. 10B(1)(e) (iii)]

Held that the Tribunal had consistently adjudicated that working capital adjustment was permissible for better comparability. In terms of rule 10B(1)(e)(iii) of the Income-tax Rules, 1962 the net profit margin arising in comparable uncontrolled transactions should be adjusted to take into account the differences, if any, between the international transaction and the comparable uncontrolled transactions which could materially affect the amount of net profit in the open market. If the working capital adjustment could not be allowed to the profit margins, then the comparable uncontrolled transactions chosen for the purpose of comparison

would have to be treated as not comparable in terms of rule 10B. As a result, the Assessing Officer was not justified in denying the working capital adjustment claimed by the assessee and was, accordingly, so directed.(AY.2016-17)

Bharat Vijaykumar Jain (HUF) v. Dy. CIT (2022) 95 ITR 122 (Bang) (Trib)

S. 92C : Transfer pricing – Arm's length price - Royalty — Transactions valued at nil ignoring evidence brought on record — Transfer pricing adjustment not sustainable .[S.92CA(3)]

Held that the Transfer Pricing Officer had based his benchmarking of the assessee's international transactions entirely upon his own order for the assessment year 2005-06. The facts and circumstances of the case at hand were identical to the facts of the assessee's own case for the assessment year 2005-06 and since the assessee had not undergone any change in the business model, the decision of the Tribunal for the assessment year 2005-06 in the assessee's favour was to be followed. In any case, the assessee had explained all the facts by its letter dated September 22, 2009 so that the findings returned by the Transfer Pricing Officer that no evidence had been brought on record by the assessee to prove the rendition of services, was not tenable. The Transfer Pricing Officer had erred in treating the value of the transaction as nil by ignoring the evidence brought on record by the assessee. The Commissioner (Appeals) had considered the facts and the law applicable thereto by examining the entire evidence on record and deleted the addition. There was no illegality or perversity in the order passed by the Commissioner (Appeals).).(AY.2006-07, 2007-08, 2008-09)

Expeditors International (India) Pvt. Ltd. v. Dy. CIT (2022)95 ITR 393 (Delhi) (Trib)

S. 92C : Transfer pricing – Arm's length price – Working capital adjustment — Question of adjustment on negative working capital does not arise- Selection of comparables - Companies engaged in diversified activities and earning revenue from various activities and no segmental data available, companies not passing employee cost filter, cannot be taken as comparable —On facts rejection of rental expenses is held to be proper . [S.92CA]

Question of adjustment on negative working capital does not arise. Companies engaged in diversified activities and earning revenue from various activities and no segmental data available, companies not passing employee cost filter, cannot be taken as comparable. On facts rejection of rental expenses is held to be proper . *(* AY.2011-12)

Harman Connected Services Corporation India P. Ltd. v. Dy. CIT (2022)95 ITR 1 (Bang) (Trib)

S. 92C : Transfer pricing – Arm's length price - Provision for bad debts to be treated as non-operating expenditure for purpose of computing profitability under transfer pricing provisions— Companies having bad debt should be considered in final set of comparables- Remanded . [S.92CA]

The issue was remanded to the Assessing Officer and the Assessing Officer/Transfer Pricing Officer was to treat the provision for bad debts as non-operating expenditure. The ad hoc bad debts filter applied by the Transfer Pricing Officer was liable to be rejected and the companies having bad debts should be considered in the final set of comparables.(AY.2005-06)

Honeywell Automation India Ltd. v . Dy. CIT (2022)95 ITR 51 /209 DTR 145 /215 TTJ 794 (Pune) (Trib)

S. 92C : Transfer pricing - Arm's length price - Transfer pricing adjustment should be restricted only to international transactions and not at entity level [Rule. 10AB]

The TPO did accept the assessee's contention of treating foreign AEs as tested parties and proceeded with the ALP determination by taking the assessee as a tested party. Held that a foreign AE can also be taken as tested party. TPO was justified in in rejecting the foreign AE as tested party and adopting the assessee itself as a tested party. The assessee could not provide the TPO with relevant and verifiable information on the foreign AEs and comparables to determine the transaction's ALP because the foreign/AEs are complex. Matter was set aside and sent to the AO/TPO file for a fresh determination based on directions. Transfer Pricing adjustment to be restricted only to value of International transaction(AY. 2014-15)

A Raymond Fasteners India (P.) Ltd. v. Dy.CIT (2022)215 TTJ 228/ 134 taxmann.com 145 (Pune) (Trib.)

S.92C :Transfer pricing – Arm's length price of guarantee commission - Arm's length guarantee commission charge should be restricted at 0.5%

Relying on CIT v. Everest kento Cylender Ltd. [2015] 232 ITR 57, The Tribunal held that guarantee commission should be restricted to 0.5% of the guaranteed amount.(AY. 2014-15)

Greenply Industries Ltd. v. ACIT (2022) 219 TTJ 257/220 DTR 18 / 143 taxmann.com 364 (Gauhati) (Trib)

S.92C: Transfer pricing – Arm's length price –TPO did not give any analysis to demonstrate how purchase of any material by eligible units from non-eligible units could have yielded extra profits - No downward adjustment of profit of eligible units (S. 80-IA(10)

The reasons given by the TPO were very general in nature merely referring to the profit margin of eligible units to the non-eligible units and the TPO had not given any analysis to demonstrate how the purchases of any material by the eligible units from the non-eligible units could have yielded extra profits. No downward adjustment of profits of eligible units was called for (AY. 2014-15)

Greenply Industries Ltd. v. ACIT (2022) 219 TTJ 257/220 DTR 18 / 143 taxmann.com 364 (Gauhati) (Trib)

S.92C :Transfer pricing – Arm's length price of guarantee commission - Arm's length guarantee commission charge should be restricted at 0.5%

Relying on Cit v. Everest kento Cylender Ltd. [2015] 232 ITR 57, The Tribunal held that guarantee comiussion should be restricted to 0.5% of the guaranteed amount.(AY. 2009-10, 2010-11)

63 Moon Technologies Limited v. DY.CIT (2022) 215 TTJ 455 (Mum)(Trib)

S. 92C : Transfer pricing – Arm's length price - Management fees- Followed order of earlier year – Addition was deleted [S. 92CA]

The issue in dispute was the Arm's Length price with respect to payment of management fees for availing intra group services. The said issue was covered by the ITAT decisions in its own

cases for the previous years. Accordingly, the ITAT followed the principles of consistency and applied the doctrine of judicial discipline in the present case. There was no material alteration in the facts as compared to the previous years. Following coordinate Bench decision, the ITAT allowed the appeal of the assessee and transfer pricing adjustment was deleted. (AY. 2012 -13)

Metalsa India (P) Ltd. v. Dy. CIT (2022) 209 DTR 1 /215 TTJ 137 (Delhi)(Trib)

S. 92C : Transfer pricing – Arm's length price –Technical assistance fee- Rule of consistency – Adjustment was deleted [S.92A]

Following the order of earlier year adjustment made in respect of technical fee was deleted . (AY. 2005 -06)

SS Oral Hygine Products (P) Ltd. v. Dy. CIT (2022) 219 DTR 225 / 220 TTJ 939 / 145 taxmann.com 285 (Mum)(Trib)

S. 92C : Transfer pricing – Arm's length price -Guarantee commission - Directed to compute TP adjustment at the rate od 0.5 percent .

The assessee Company provided corporate guarantee to its AE without any compensation/fees . Following the decision of the Hon'ble jurisdictional High Court in CIT v Everest Kento Cylinders Ltd. (2015) 378 ITR 57 (Bom.) (HC) , the addition has been upheld charging of guarantee commission at the rate of 0.5%. (AY . 2008 -09)

Siddhayu Ayurvedic Research Foundation Pvt. Ltd. v. Dy.CIT (2022) 219 TTJ 881 / 218 DTR 113 / 98 ITR 46 (SN) /142 taxmann.com 572 (Mum) (Trib)

S. 92C : Transfer pricing – Arm's length price -Corporate guarantee - ALP adjustment on account of corporate guarantee restricted to 0.35%.

The assessee Company in the business of port infrastructure facilities and engineering, construction and consultancy services, etc. The TPO ascertained the ALP of the corporate guarantee at 1.5% and accordingly made ALP adjustment of Rs. 2,81,99,740/. The CIT (Appeals) restricted the adjustment made by the TPO to the rate of 0.5% following the decision of the Hon'ble Bombay High Court in the case of CIT Vs. Everest Kento Cylinders Ltd. (2015) 378 ITR 57 (Bom.) (HC). The ITAT held that on the peculiar facts of the case and in the light of yield spread method adopted by the assessee which has not been faulted by the Revenue, the ALP adjustment on account of corporate guarantee restricted to 0.35%.(AY. 2013 -14)

Sikka Ports & Terminals Ltd. v. Dy. CIT (2022) 219 TTJ 159 / 217 DTR 75 / 140 taxmann.com 211 (Mum)(Trib)

S. 92C : Transfer pricing – Arm's length price -CUP method – Matter remanded.

Held that TPO was not justified in summarily rejecting the CUP method adopted by the assessee for benchmarking the transactions of purchase of UPS with its AEs. TPO was directed to re -examine the case of the assessee and apply either CUP as considered by the assessee or RPM as proposed by the assesseee. (AY. 2010 -11, 2011-12)

Socomec Innovative Power Solutions (P) Ltd. v. Dy. CIT (2022) 219 TTJ 869 / 218 DTR 101 / 144 taxmann.com 169 (Chennai) (Trib)

S. 92C : Transfer pricing – Arm's length price - Guarantee arrangements, arm's length guarantee commission charge should be restricted at 0.5 per cent of guaranteed amount- Adjustment of purchases –Eligible and non -eligible units - Downward adjustment was held to be not valid [S. 80IA(10), 92CA]

TPO, levied corporate guarantee fees at rate of 1.22 per cent, 1.69 per cent and 1.27 per cent of respective loan amounts and made TP adjustment – On appeal the Tribbunal held that arm's length guarantee commission charge should be restricted at 0.5 per cent of guaranteed amount . Assessee-company operated various units of which some units were eligible for deduction under section 80-IA(10) (eligible units) and some were non-eligible units . During year under consideration, non-eligible units were engaged in manufacturing of veneer and same was supplied to various buyers including eligible units . Eligible units utilized veneer procured from other units for purposes of manufacturing finished product, i.e. plywood - TPO made downward adjustment in respect of purchase of eligible units from non-eligible units of assessee alleging that eligible units of assessee had earned more than ordinary profit than it could have actually earned had transaction between eligible and non-eligible units were undertaken at an arm's length . On appeal the Tribunal held that since TPO had not given any analysis to demonstrate how purchase of any material by eligible units from non-eligible units could have yielded extra profits, no downward adjustment of profit of eligible units could be sustained . (AY. 2014 -15)

Greenply Industries Lid v. ACIT (2022) 220 DTR 18 / 219 TTJ 0257 / 143 taxmann.com 364 (Gauhati)(Trib)

S. 92C : Transfer pricing – Arm's length price - Bright Line Test (BLT) AMP expenses - TPO was not justified in holding that by incurring AMP expenditures assessee had promoted brand and marketing intangible of its overseas AE and, thus, it had to be treated as international transaction. [S. 92B]

Assessee-company is a subsidiary of Whirlpool USA and was engaged in business of production, sales and distribution of Whirlpool appliances .It had incurred expenditure towards AMP which worked out to 1.39 per cent of sales . TPO held that while incurring AMP expenditures, since assessee had promoted brand and marketing intangible of overseas AE, it had to be treated as international transaction and he proceeded to determine ALP of transaction by applying Bright Line Test (BLT) method and proposed an adjustment. Tribunal held that in assessee's own case in assessment year 2015-16 in Whirlpool of India Ltd. v. Asstt. CIT [IT Appeal No. 9191/Delhi/2019, dated 20-1-2020], Tribunal had decided issue in favour of assessee and held that AMP expenses incurred by assessee could not be treated as international transaction .Following the earlier decision of the Tribunal the adjustment was directed to be delted . aforesaid decision of Tribunal, adjustment made by TPO was to be deleted . (AY. 2016-17)

Whirlpool of India Ltd. v. ACIT (2022) 219 TTJ 288 / 218 DTR 242 / (2023) 146 taxmann.com 136 (Delhi)(Trib)

S. 92C : Transfer pricing-Arm's length price-Manufacturer and exporter of gem stones-Methods for determination of Arm's Length-TPO was not justified in adopting berry ratio as an appropriate PLI-Adjustment made by TPO is deleted.[S. 92CA]

Assessee was engaged in manufacturing and import/export of coloured stones and studded jewellery to/from its Associated Enterprise (AE) and had two manufacturing units. It adopted Gross Profit Margin/Cost of Production (GPM/COP) as appropriate Profit Level Indicator (PLI) for benchmarking analysis. TPO adopted Operating Profit/Value Added Expenses (OP/VAE) as appropriate PLI. Held that in a situation in which there is further processing of goods procured before selling same or in a situation which necessitates employment of assets in infrastructure for processing or maintenance of inventories, use of berry ratio does not seem to be quite appropriate. Therefore, appropriate profit indicator was

GPM/COP and since median came to be 12.09 per cent, considering comparables selected by TPO as against assessee's margin of 13.51 per cent, no TP adjustment was required. (AY. 2008-09)
Vaibhav Global Ltd. v. DCIT (2022) 196 ITD 526/ 217 TTJ 779 (Jaipur) (Trib.)

S. 92C : Transfer pricing-Arm's length price-Trading goods-Capitalised goods-Adjustment was deleted –Adjustment of interest-Delay in realization of invoices raised on AE-Matter remanded to the AO-
Assessee was engaged in business of trading of medical equipment, i.e., blood gas analysers and consumables. It followed a unique business model wherein it bought analysers and sold them to third parties, i.e., hospitals, medical institutions etc., booked revenue under trading segment and if customer was not willing to buy analysers, such instruments were installed at customer's premises and cost of such analysers imported from AEs, was capitalized in books of account of assessee. TPO had accepted purchase price of such analysers for trading segment as at arm's length, but determined arm's length price of purchase of fixed assets (analysers) at Nil.Tribunal held that import of goods was substantiated by furnishing custom documentation, custom's duty paid and TPO had not applied any method to benchmark said transaction. While treating purchase of capital goods as NIL, TPO failed to provide any comparable data which would have suggested that arm's length price for purchase of capital goods can be NIL. Since same products purchased from same AE for same price in same year could not be held to be at arm's length for trading goods and not at arm's length for capitalised goods, adjustment made by TPO was to be deleted.Further, since there was delay in receivables from AE and in some instances, delay was substantial,TPO proceeded to compute interest on receivables. Assessee contended that the same cannot be treated to be an international transaction. Tribunal held that it had to be ascertained what was average delay in case of AE and non-AE transactions and reason for delay had to be looked into. Issue was restored to Assessing Officer for fresh adjudication.(AY. 2014-15)
DHR Holding India (P.) Ltd. v. ACIT (2022) 194 ITD 192 (Delhi) (Trib.)

S. 92C : Transfer pricing-Arm's length price-Comparables-Export filter-filter of 10 per cent as applied by assessee was most reasonable-Matter remanded.
Held that one of filters adopted by assessee in his TP approach in respect of comparables, i.e., export sales less than/equal to 10 per cent of sales was rejected by TPO on ground that no justification had been given by assessee for applying this filter. It was found that out of total sales made by assessee, 99.96 per cent of total sales were made to manufacturers in India and thus, in order to find comparables commensurate with geographical locations in which assessee was functioning, application of filter of 10 per cent as applied by assessee was most reasonable. Tribunal directed the TPO to exclude comparable companies where export sales were more than 10 per cent of total sales and decide issue afresh.(AY. 2014-15)
Munjal Showa Ltd. v. JCIT (2022) 194 ITD 199 (Delhi) (Trib.)

S. 92C : Transfer pricing-Arm's length price-Working capital adjustments-Working capital adjustment to be allowed where TNMM used for calculation of ALP [R. 10B]
Held that where TNMM was used for calculation of ALP of international transactions entered into by assessee with its AEs, working capital adjustment was to be allowed. (AY. 2016-17
Bharat Vijaykumar Jain (HUF) v. DCIT 194 ITD 288/ 94 ITR 122 (Bang) (Trib)

S. 92C : Transfer pricing-Arm's length price-Comparable-Distribution of products-Royalty paid by assessee would be within arm length range and impugned ALP adjustments were deleted-Merchandise and samples from its AE for resale in India-Resale Price Method (RPM) is Most Appropriate Method (MAM) to benchmark said international transaction.

Assessee was engaged in business of distribution of its AE's products in India through wholesale channels and retail networks for which it entered into a royalty agreement with its AE. TPO selected comparables to justify ALP of royalty at 3.31 per cent as against payment of 5 per cent royalty made by assessee.A clause of guaranteed minimum royalty was present in royalty agreements of comparables selected by TPO.Tribunal held that since no such clause was available in case of assessee, said comparables would be excluded and arithmetic mean of comparables would come to 5.25 per cent which was more than royalty paid by assessee. Accordingly the royalty paid by assessee would be within arm length range and impugned ALP adjustments were deleted. Tribunal also held that where the assessee purchased merchandise and samples from its AE for resale in India without any value addition, in such case, Resale Price Method (RPM) is Most Appropriate Method (MAM) to benchmark said international transaction. (AY. 2012, 13, 2013-14)
Diesel Fashion India Reliance (P.) Ltd. v. ACIT *(*2022) 194 ITD 296 (Mum) (Trib.)

S. 92C : Transfer pricing-Arm's length price-Comparable-Turnover filter-When the AO had applied lower turnover filter of Rs. 1 crore and rejected companies with turnover less than Rs. 1 crore from list of comparable companies, he ought to have excluded companies with high turnover from list of comparable companies, i.e., companies having turnover of Rs. 200 crores and above as well.[S.92CA]

Tribunal held that since AO/TPO had applied lower turnover filter of Rs. 1 crore and rejected companies with turnover of less than Rs. 1 crore from the list of comparable companies, he ought to have excluded companies with high turnover from the list of comparable companies (companies having turnover of Rs. 200 crores and above). Thus, taking a consistent view, the AO/TPO should consider the comparables in both ITS and ITes segments having turnover of 1-200 crores and decide the issue accordingly. (AY. 2016-17)
Cenduit (India) Services (P.) Ltd v. DCIT (2022) 94 ITR 377 (Bang)(Trib)

S. 92C : Transfer pricing-Arm's length price-Comparable-Software Development Services (SWD)- Selection of comparables basis segmental information, functional differences, turnover filters[S.92CA]

Tribunal held as under on various comparables:-
Kals Information Systems Ltd.-KALS is engaged in development of software and software products. Pertinently, the CIT(A) has given a clear finding that there is no segmental information available in relation to software development and software products and, accordingly, directed its exclusion.

ICRA Techno Analytics Ltd.-This company is engaged in a diverse range of IT Solution Services and it is not a full-fledged software development company. Thus, functionally different from the assessee.
Tata Elxsi Ltd.-The company provides niche services which is not comparable to the low-end SWD services rendered by the assessee. Tata Elxsi has also invested heavily in R&D activities and has expenses amounting to nearly 3 per cent of its sales, which demonstrates that the company is engaged in innovation of products and services. CIT(A)'s exclusion of the said companies ought to be upheld.
Infosys Ltd.-Very high turnover for the year under consideration. It is a giant in the software development space while the assessee is a captive unit. The company also has high brand value and focusses on brand building which occasions the high profits. The company acts as an entrepreneur as against the assessee which is a captive unit. It also focusses heavily on R&D and, thus, the company is not comparable to the assessee.
Persistent Systems Ltd.-This company is engaged in rendering outsourced product development as against software development services and is, thus, not comparable to the assessee. Further no break-up is available between sale of software services and sale of products. Also, extra-ordinary activity is observed for the current year and hence directed to be excluded.
Accentia Technologies Ltd.-It is not only a provider of high-end services in the nature of KPO but is also engaged in the development of software products for the healthcare segment. Segmental details for its various activities are unavailable. It is an entrepreneurial & engaged in performing additional functions over and above routine functions by assuming high risks and developing intangible assets, which is unlike the functions performed and risks assumed by the assessee. Also, extra-ordinary activity is observed for the current year and hence directed to be excluded.
E-Clerx Services Ltd.-It is a KPO service provider and mainly engaged in providing high-end services involving specialized knowledge and domain expertise in the financial services retail and manufacturing. Hence, cannot be compared with the assessee who is a low-end service provider to its AEs.
Infosys BPO Ltd.-This company is functionally dissimilar as it has substantial brand value, owns intellectual property rights and is a market leader with brand value. Also, Infosys BPO enjoys huge brand value and has also made significant investments in creating intangibles and owns several intellectual properties. Therefore, Infosys BPO is not comparable to the assessee. (AY. 2010-11)
First American (India) (P.) Ltd v. DCIT (2022) 94 ITR 577 (Bang) (Trib)

S. 92C : Transfer pricing-Arm's length price-Comparable-Since working capital adjusted margin of assessee had already been factored in delay in receivables, and further assessee was not charging interest on overdue debts from third parties, and was also not paying any interest to creditors, no adjustment was further warranted-When the TPO could not controvert the independent reports of valuation furnished by the Assessee and followed no prescribed method of determining ALP, yet made additions, the same was termed untenable-With primary adjustment being rejected, consequent secondary adjustment fails too-If an Indian entity has satisfied the TNMM i.e., the operating margins of the Indian enterprise are much higher than the operating margins of the comparable companies, no further separate adjustment for Royalty expenditure is warranted.

Held that if the working capital adjusted margin of the assessee corresponding to the international transaction, which are related to such transaction is better than that of the

comparables, then no separate adjustment would be warranted. Further held that it is evident from the TPO's valuation that the TPO had cherry picked the numbers (without explaining the basis) and figures from different methods of valuation in both the valuation reports in the manner beneficial to the Revenue. The TPO's valuation is also not as per the prescribed methods of determining the arm's length price. Findings of the DRP are upheld, which deleted the transfer pricing addition on buy back of shares. Consequently, deletion of the secondary transfer pricing adjustment is also confirmed. Also held that in the absence of a comparable uncontrolled price, arm's length price cannot be determined at Nil using the same comparable uncontrolled price method. Further placing reliance on the judgement in Sony Ericsson Mobile Communications India Ltd. the Hon'ble Tribunal held that-if an Indian entity has satisfied the transactional net marginal method i.e., the operating margins of the Indian enterprise are much higher than the operating margins of the comparable companies, no further separate adjustment for Royalty expenditure was warranted. As regards the adjustment towards royalty payment by the assessee, the DRP upheld the order of the AO/TPO. Upon appeal before the Hon'ble Tribunal, held that-Neither the TPO nor the DRP has brought on record any comparable uncontrolled price for the royalty payment and hence no adjustment required.(AY. 2009-10)

Dell International Services India (P.) Ltd v. JCIT (2022) 94 ITR 247 (Bang)(Trib)

S. 92C : Transfer pricing-Arm's length price-Reclassifying from a marketing and sales service provider to technical and business service provider-Held to be not proper-Matter remanded [S.92CA]

Held that while making the transfer pricing adjustment, the TPO reclassified the business profile of the assessee as a full-fledged technical and business support service provider merely for the reason that the assessee had not furnished proper bifurcation of the employees involved in the two activities. The engineers could have been appointed by the assessee to carry out some work in the field of marketing services. The assessee was not disentitled to do so. Hence, the reason for reclassification was not justifiable. Since judicial discipline required consistency in proceedings from year to year, the assessee's business profile could not be changed from year to year when all international transactions of the assessee were based on the same agreement with its associated enterprise. The findings of the Revenue authorities were vacated and the Transfer Pricing Officer was directed to carry out the transfer pricing study afresh so as to determine the arm's length price of the assessee's international transactions with its associated enterprise treating the assessee to be a full-fledged marketing service provider.(AY: 2009-10)

Parametric Technology (India) P. Ltd. v. Dy. CIT (2022) 94 ITR 398 (Bang)(Trib)

S. 92C : Transfer pricing-Arm's length price-Business support services-No finding that services not rendered-Directed to benchmark transactions adopting Transactional Net Margin Method.

Asssessee availed Intra group services from AEs and benchmarked the same using TNMM. TPo rejected benchmarking holding that no services were rendered. Tribunal held that even while examining the e-mails TPOdid not state that no services have been rendered but had rejected them stating that these were shareholders activity or duplicative in nature. The Commissioner (Appeals) examined the e-mails and gave a categorical finding about the

rendition of the services. This finding remained uncontroverted. Further, if the Transfer Pricing Officer was not satisfied with the contents of the e-mails, he could have further probed the transaction with respect to various programmes and their content. In view of these facts, there was no infirmity in the order of the Commissioner (Appeals) in holding that the peculiar intra group services were shown to have been rendered by the associated enterprises to the assessee and directing the transactions to be benchmarked under the transactional net margin method(AY. 2012-13)

Endemol India Pvt. Ltd. v. ACIT (2022)94 ITR 40 (SN)(Mum)(Trib)

S. 92C : Transfer pricing-Arm's length price-Comparables-Functionally dissimilar companies cannot be taken as comparable--Government owned company taken as comparable on ground of functional similarity-Low turnover for particular year cannot be ground to exclude company functionally similar-Matter remanded.

Held that functionally dissimilar companies cannot be taken as comparable. Government owned company taken as comparable on ground of functional similarity. Low turnover for particular year cannot be ground to exclude company functionally similar.The issue was restored to the Transfer Pricing Officer to recompute the working capital adjustment as per the arm's length price margins after hearing the assessee.(AY. 2014-15)

Honda R and D (India) Pvt. Ltd. v. Dy. CIT (2022)94 ITR 15 (SN)(Delhi)(Trib)

S. 92C : Transfer pricing-Arm's length price-Provision of software consultancy services-Adjustment to be restricted to amount retained by associated enterprise.[S.92CA(3)]

Held that the transfer pricing adjustmentshould be restrictedto the amount retained by the associated enterprise andand directed tocompute the total income of the assessee in accordance with law.(AY. 2004-05)

Trigyn Technologies Ltd. v. ACIT (2022)94 ITR 71 (SN) (Mum) (Trib))

S. 92C : Transfer pricing-Arm's length price-Arm's Length Price--Comparables-Data for comparable company was available and hence comparable to be considered afresh-Extraordinary event affects profitability of company and hence should not be considered as comparable.[S.92CA]

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Where reasons given for rejection of comparable was that data relating to this company was not available in public domain, however, on perusal of Director's report and Annual report of this company, it was evident that

datas were available in public domain, TPO was to be directed to consider comparability of this company afresh. Further, it was held that Extraordinary events such as merger/demerger would have an impact/effect on profitability of a comparable company and make it as not comparable and hence said company was to be excluded from final set of comparables(AY.2012-13)

Sas Research and Development (India) Pvt. Ltd. v. Dy. CIT (No. 1) (2022)93 ITR 482 (Pune) (Trib)

S. 92C : Transfer pricing-Arm's length price-Comparables-Companies having no segmental information or subject to extraordinary event or companies fully involved in related-party transactions-Not comparable. [S.92CA]

Held that companies having no segmental information or subject to extraordinary event or companies fully involved in related-party transactions are not comparable.(AY.2013-14)

Sas Research and Development (India) P. Ltd. v. Dy. CIT (No. 2) (2022)93 ITR 501 (Pune) (Trib)

S. 92C : Transfer pricing-Arm's length price-Comparables-Exclusion of functionally dissimilar comparables –Though company was following different financial year, data could be compared from audited accounts of companies-Provisions written back in profit and loss account should be regarded as forming part of operating profit of assessee[S.92CA, 234B]

Held thatthough company was following different financial year,data could be compared from audited accounts of companies and accordingly directed the TPo to consider the same. It was held that company should not be excluded as comparable if it is functionally similar merely because it is following different financial year.The Assessing Officer/Transfer Pricing Officer excluded the provisions and liabilities written back in the profit and loss account as not forming part of operating profit of the taxpayer. Held that in the earlier assessment years these items were treated as a part of operating expenditure. Therefore, they had to be considered as operating income for the relevant year.Held, that the interest was mandatory and consequential in nature.(AY.2010-11)

First Advantage Global Operating Centre P. Ltd. v. Dy. CIT (2022)93 ITR 101 (Bang) (Trib)

S. 92C : Transfer pricing-Arm's length price-Comparables-Companies with turnover in excess of Rs. 200 Crores-Not Comparable-Companies functionally different and those with diversified activities without segmental details not comparable--Working capital adjustment to be computed on basis of actuals without an upper limit-Matter Remanded-Reference to Transfer Pricing Officer-If TPO received order of reference late though AO had made reference within time, it cannot be said that no valid reference is made and thereforeExtended limitation available to Revenue. [S.92CA, 144C, 153]

Held that the Commissioner (Appeals) was justified in applying the turnover filter to exclude companies whose turnover was in excess of Rs. 200 crores from the list of comparables. The assessee's turnover of about Rs. 29 crores could not be compared with six of the comparable companies whose turnover was more than Rs. 200 crores. As for the remaining three companies, the Tribunal, with reference to assessment year 2010-11 in the case of EI, had treated these three companies as not comparables on the ground that one of the companies was engaged in diversified activities and the second company was engaged in software products, neither of which was comparable with a pure software development service provider such as the assessee. The third company earned revenue from software services as well as sale of software products and did not have segmental details to be comparable with the assessee. Hence, all three companies had to be excluded from the list of comparable companies. Companies functionally different and those with diversified activities without segmental details not comparable. Working capital adjustment to be computed on basis of actuals without an upper limit. Matter Remanded.

It was further heldthat prior to March 31, 2013 there had been a letter dated February 18, 2013 issued by the Assessing Officer to the Transfer Pricing Officer making a reference under section 92CA. The fact that the Transfer Pricing Officer received this letter only on April 18, 2013 could not be the basis to conclude that there was no reference under section 92CA and, therefore, the extended period of limitation of three years under the third proviso to section 153(1) was not available to the Revenue. As an order of reference had been made under section 92CA on February 18, 2013, the assessee's contention that the reference was made two years from the end of the relevant assessment year and, therefore, barred by limitation could not be accepted.On facts extended limitation available to Revenue**..***(*AY.2010-11)

Sandisk India Device Design Centre Pvt. Ltd. v. ITO (2022)93 ITR 569 (Bang) (Trib)

S. 92C : Transfer pricing-Arm's length price-Rendering business support services-Reimbursement with mark-up-Matter remanded to CIT(A) for adjudication de novo.

Held that if the assessee, through a proper working and supporting evidence, established on record that all costs incurred by the assessee, whether direct or business support, had been remunerated with a mark-up of 12 per cent. no adjustment can be made. However, the onus was entirely on the assessee to prove such fact. To provide an opportunity to the assessee to bring material on record in support of its claim that the invoice raised also included the mark-up of 12 per cent. on all types of cost, including business support cost, the issue was to be restored to the Commissioner (Appeals) for de novo adjudication after affording the assessee due opportunity of being heard.(AY.2011-12)

BBC World Service India Pvt. Ltd. v. Dy. CIT (2022)93 ITR 28 (SN)(Delhi) (Trib)

S. 92C : Transfer pricing-Arm's length price--Transactional Net Margin Method-Selection of comparables-Tribunal for the earlier year directing exclusion of all companies having annual turnover less than Rs. 5 crores in Information Technology enabled services segment-Order of Transfer Pricing Officer including company having turnover below Rs. 5 Crores from Segment-Not justified.[S. 92CA]

Dismissing the appeal the Tribunal held thatwhile deciding assessee's appeal for the assessment year 2002-03, the Tribunal had excluded KC Ltd. as a comparable since its turnover from information technology enabled services segment was less than Rs. 5 crores. Therefore TPO not justified in including the same company as comparable again in subsequent year. Order of CIT(A) is affirmed.(AY.2003-04)

JCIT v. American Express (India) Pvt. Ltd. (2022)93 ITR 45 (SN)(Delhi) (Trib)

S. 92C : Transfer pricing-Arm's length price-Purchase of sap licence-Details submitted but authorities failing to consider-Application of benefit test instead of methodology set out in Act and rules not sustainable.[R.10B]

Held that the requisite details were submitted and the authorities below had failed to consider them and instead held that proper details were not submitted after having held that there was no benefit to the assessee from the licence.The authorities below had erred in holding the arm's length price at nil on the ground that relevant documents had not been submitted. The details as regards the issue of cost sharing had been submitted and the authorities below had erred in ignoring them. The assessee had discharged the onus cast upon it. The determination of arm's length price at nil without following one of the methods prescribed under section 92C of the Income-tax Act, 1961, read with rule 10B of the Income-tax Rules, 1962, was not sustainable.(AY.2008-09)

PPG Coatings India Pvt. Ltd. v. Dy. CIT (2022)93 ITR 52 (Trib) (SN)(Mum)(Trib)

S. 92C : Transfer pricing-Arm's length price-CUP method-Applying of 'QUOTE' from third party for economic analysis using CUP method was not a justifiable method-Service Tax receipts do not form part of Computation of Income under section 44BB.

The assessee had sub-contracted work to MIOL in relation to a contract awarded by ONGC to assessee. However, subsequent to a global acquisition by group to which assessee belonged MIOL had become a part of said group and, consequently, an AE of assessee.CUP method had been applied by assessee to determine arm's length price for inter-company transactions between assessee and its AE in relation to availing of sub-contractor services. TPO held that assessee had applied CUP method by using a QUOTE from a third party and since a quotation may not be a good base to apply CUP method in normal circumstances, TNMM was MAM. Tribunal held that-CUP method is most direct and reliable way of applying arm's length principle and price an inter-company transaction but applying of 'QUOTE' from third party for economic analysis using CUP method was not a justifiable method, matter was set aside to file of Assessing Officer to determine ALP using CUP method taking into consideration appropriate comparables**.** It was also held that service tax receipts do not form part of receipts for Computation of Income in section 44BB (AY. 2011-12)

DCIT v. Schlumber Solutions (P.) Ltd. (2022) 193 ITD 293 (Dehradun) (Trib.)

S. 92C : Transfer pricing-Arm's length price-Comparable-Filter-Filter applied by TPO was to be included in list of comparables regardless of fact that it was low margin earning company.[S. 133(6)]

Assessee is engaged in providing software development services to its AEs.TPO identified 17 comparable companies and computed additions on account of determination of ALP. CIT(A) excluded one company from list of comparables on ground that it was in multiple businesses and segmental information was not available. On appeal the Tribunal held that since, said company passed 75 per cent software development services filter applied by TPO, same was to be included in list of comparables regardless of fact that it was low margin earning company. (AY. 2005-06)

Infor (Bangalore) (P.) Ltd v. DCIT (2022) 193 ITD 478 (Bang) (Trib.)

S. 92C : Transfer pricing-Arm's length price-Resale Price Method (RPM)-Resale of goods imported from its AE to third party customers without any value addition-Resale Price Method (RPM) is Most Appropriate Method (MAM).

Held that resale of goods imported from AE to third party Indian customers without any value addition, in such case, Resale Price Method (RPM) would be Most Appropriate Method (MAM) to determine ALP of said transaction. Directed the Assessing Officer to apply Resale Price Method (RPM). (AY. 2015-16)

Randox Laboratories India (P.) Ltd. v. ACIT (2022) 193 ITD 609 /94 ITR 163 (Bang) (Trib.)

S. 92C : Transfer pricing-Arm's length price-Related transactions constituted 96.30 per cent of total turnover for which margin was agreed to be 15.85 percent under MAP resolution-Same rate to be applied for non USA related transactions under EDS segment.

Assessee, a subsidiary of US based company undertook engineering design services (EDS) for its AEs. Assessee submitted that issue related to transfer pricing adjustment made in respect of EDS had been settled through Mutual Agreement Procedure (MAP) and margin was determined at 15.85 per cent for USA related transactions. Tribunal held that since USA related transactions constituted 96.30 per cent of total turnover of EDS segment for which margin was agreed to be 15.85 per cent under MAP resolution, same rate was to be adopted for non-USA related transactions under EDS segment. (AY. 2011-12)

Textron India (P.) Ltd. v. DCIT (2022) 193 ITD 829/93 ITR 58 (SN) (Bang) (Trib.)

S. 92C : Transfer pricing-Arm's length price-Turnover-Comparable-Companies having turnover of more than 200 crores upto 500 crores have to be regarded as one category and said companies cannot be regarded as comparables with companies having turnover of less than 200 crores.

Tribunal held that while choosing companies as comparable companies in determination of ALP in transfer pricing cases, 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.(AY. 2013-14)

Galax E Solutions India (P.) Ltd. v. ACIT (2022) 192 ITD 326 (Bang.) (Trib.)

S. 92C : Transfer pricing-Arm's length price-High Turnover-Huge intangible addition-Negative working capital-High turnover is a ground for excluding companies as not comparable with a company that has low turnover-Huge intangible assets-Could not be considered for inclusion in list of comparables to software development services provider.-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.

Tribunal held that high turnover is a ground for excluding companies as not comparable with a company that has low turnover. Company having huge intangible assets could not be considered for inclusion in list of comparables to software development services provider. 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)

Aptean India (P.) Ltd. v. DCIT (2022) 192 ITD 397/ 93 ITR 388 (Bang) (Trib.)

S. 92C : Transfer pricing-Arm's length price-Abnormal events-If an extraordinary event has taken place by way of amalgamation in a company, that company cannot be considered as a comparable-.Related party transaction of selected company exceeded limit of 25 per cent, said company be excluded from comparable list-turnover of selected company was almost 80 times more than turnover of assessee-company, said company could not be selected as comparable.

Tribunal held that if an extraordinary event has taken place by way of amalgamation in a company, that company cannot be considered as a comparable. Related party transaction of selected company exceeded limit of 25 per cent, said company be excluded from comparable list.Where turnover of selected company was almost 80 times more than turnover of assessee-company, said company could not be selected as comparable. (AY. 2015-16)

Entercoms Solutions (P.) Ltd. v. ACIT *(*2022) 192 ITD 685 (Pune) (Trib.)

S. 92CA :Reference to Transfer Pricing Officer-Arm's Length price-Limitation-Reference and approval-Question of limitation is legal plea and can be raised at any stage-Existence of alternate remedy not bar-Writ is maintainable Participation of assessee in proceedings not a bar to challenging jurisdiction--The reference to the Transfer Pricing Officer had been made after the permissible period, the timeline had been missed by the Department at every stage. Therefore, as a sequitur, all further proceedings, in furtherance thereof were also bad in law-Decision of single judge set aside.[S. 144C, 153(1) Art, 226]

Before the Dispute Resolution Panel, the assessee raised an objection with regard to period of limitation for making reference to TPO and the consequent assessment proceedings. However, the Dispute Resolution Panel dismissed the objections by an order dated September 24, 2010. Challenging both the orders of the Additional Commissioner and the Dispute Resolution Panel the assessee filed a writ petition under article 226 of the Constitution of India. The writ petition was dismissed holding that the Dispute Resolution Panel had rightly overruled the objections raised for the first time before it by the assessee regarding the limitation to proceed with the assessment, that therefore, the assessee could not challenge the jurisdiction of the Additional Commissioner's reference to the Transfer Pricing Officer after December 31, 2008. On appeal allowing the appeal, the Court held that the writ petitions were maintainable and alternative remedy would not operate as a bar. The question of limitation was a legal plea which went to the root of authority or jurisdiction. There was no dispute on the facts about the date on which the reference was made or when the order was passed. The interpretation of the provision to be adjudicated is a pure question of law. The

question of limitation is a legal plea, which goes to the root of the jurisdiction of the authorities, and can be raised at any stage of the proceedings. There cannot be any waiver of a statutory right. There is no acquiescence, waiver or estoppel in taxing laws. The law on this point is well settled. The levy and collection of tax must be within the four corners of law in compliance with the substantial and procedural mandates of connected legislations. Relied on National Textile Corporation Ltd. v. Nareshkumar Badrikumar Jagad [2011] 12 SCC 695,Band Box (P.) Ltd. v. Estate Officer, Punjab and Sind Bank [2014] 16 SCC 321,K. Lubna v. Beevi [2020] 2 SCC 524, Superintendent of Taxes v. Onkarmal Nathmal Trust [1976] 1 SCC 766 and CIT v. Jolly Fantasy World Ltd. [2015] 373 ITR 530 (SC)
Court also held that the extension in time limit on account of reference to TPO had to be made before the expiry of the time limit prescribed for original assessment was applicable because the second proviso uses the words "and during the course of the proceeding for assessment". The first two provisos to section 153(1) lay down that the time limit to pass the original assessment order is 21 months and when a reference to the Transfer Pricing Officer is made during the course of such proceedings, the time limit would be 33 months and that if no reference is made within the period provided for assessment, no reference can be made subsequently since the Assessing Officer becomes functus officio. The words used in section 153 are very clear as they lay down that "no order of assessment shall be made". The order in the writ petition was to be set aside.That concurrence was obtained from the Commissioner before December 31, 2008 would not be of any assistance to the Department as indisputably the reference to the Transfer Pricing Officer was made only on February 17, 2009. That according to the timeline, when the time given to the Dispute Resolution Panel itself was 9 months from the date of the draft assessment order to complete the assessment and then a further time of one month to the Assessing Officer to complete the assessment from the end of the month in which the direction was received, it could not be said that the total additional time was 9 months and the provisos to section 153(1) had no connection. If the time limits provided to the Transfer Pricing Officer to pass an order and for the assessee to submit its objections in terms of section 144C(2) were also considered within the time period for the Dispute Resolution Panel and the Assessing Officer, the extended period was 12 months and not 9 months. When one proviso provides a time limit and when another proviso extends such time under certain circumstances, it cannot be held that the provisos are independent. Therefore, when the extended time provided for the Department was 12 months it could not be contended that it was only 9 months since the reference was not made in time. Since the reference to the Transfer Pricing Officer had been made after the permissible period, the timeline had been missed by the Department at every stage. Therefore, as a sequitur, all further proceedings, in furtherance thereof were also bad.(AY. 2006-07)

Virtusa Consulting Services Pvt. Ltd. v.DRP (No. 2) (2022)446 ITR 454 (Mad) (HC)
Editorial : Order of single judge set aside, Virtusa Consulting Services Pvt. Ltd. v DRP (No. 1) (2022)446 ITR 439/ 212 DTR 292 / 326 CTR 59 (Mad) (HC)

S. 92CA :Reference to transfer pricing officer-Limitation-60 days-General Clauses Act-Order barred by limitation-Writ is maintainable.[S. 92B, 92CA(3), General Clauses Act, 1897, S.9, Art, 226]
Dismissing the writ appeals of the Revenue the Court held that the order of the Transfer Pricing Officer had been challenged on the ground of limitation, which went to the root of jurisdiction. What was called upon to be adjudicated was the interpretation of the provision,

which was a pure question of law. Therefore, the writ petitions were maintainable and had been rightly entertained by the judge. The Assessing Officer had time up to 23 : 59 : 59 hours on December 31, 2019 to pass the assessment orders. However, according to the Department, the time limit expired at 00.00 hours of January 1, 2020. The fallacy in such contention is that 00.00 hours of January 1, 2020 denotes not only the beginning of the next day of the month, but also the fact that it comes after 23 : 59 : 59 hours on December 31, 2019 and by such time, the time limit had already expired. Under section 153, no order can be passed at any time after the expiry of twenty one months implying that the order had to be passed before 23 : 59 : 59 hours on December 31, 2019. The provision cannot be considered ignoring the words "at any time after expiry". Going by section 9 of the General Clauses Act, when the word "from" is used, that date is to be excluded, and hence that December 31, 2019 must be excluded. After excluding December 31, 2019, if the period of 60 days were calculated, the 60th day would fall on November 1, 2019 and the Transfer Pricing Officer must have passed the order on or before October 31, 2019 as orders were to be passed before the 60th day whereas in the present case, the TPO passed the order on 1 November 2019. The word "may" used in section 92CA(3A) has to be construed as "shall" and the same would imply that the TPO can pass order any day before expiry of 60 days.The order challenged in the writ petitions were barred by limitation. Decision of single judge affirmed.(AY. 2016-17)

DCIT (TP)v. Saint Gobain India Pvt. Ltd. (2022) 444 ITR 636/ 217 DTR 57 / 328 CTR 387 (Mad) (HC)

Editorial : Order of single judge in Peizer Heath Care India Pvt Ltd (2021) 433 ITR 28 /201 DTR 367/ 320 CTR 812 / 124 taxmann.com 536 (Mad)(HC) affirmed.

S. 92CA : Reference to Transfer Pricing Officer – Guidelines issued by CBDT- Adjustment of more than 10 crores or more- No adjustment of more than 10 crores in the case of assessee- Reference made to TPO not valid - Subsequent order passed by TPO not sustainable- [S. 92C]]

The Tribunal held that the addition made on the basis of an order passed by the Transfer Pricing Officer on an invalid reference by the Assessing Officer was a nullity and the addition made consequent to such illegal order was not sustainable. (Instruction No. 3 of 2016 (2016 382 ITR 36 (St.) (AY. 2014-15)

Rittal India Pvt. Ltd. v. ACIT (LTU) (2022)97 ITR 30 (SN) (Bang) (Trib)

S. 92CA :Reference to transfer pricing officer-Additional ground-Limitation-Time-limit specified under section 92CA(3A) is mandatory-TPO is bound by time-limit for passing of order under section 92CA (3), failing which the order is invalid.– TP addition in final Assessment order would not survive.[S.92CA(3A), 254(1)]

The Assessee filed an additional ground before the Hon'ble Tribunal that the order passed by the Ld. TPO is time barred under the provisions of section 153 r/w. 92CA (3) of the Act and hence it is liable to be quashed. As per the assessee, reference u/s 92CA (3) of the Act was received by the Ld. TPO on 3-7-2012 and therefore date of limitation for passing of the order by ld. TPO expired on 30-1-2014. Whereas the Ld. TPO passed order u/s 92CA (3) on 31-1-2014. Therefore, the order passed by the Ld. TPO is barred by the limitation. The Assessee thus submitted that since the order of the Ld. TPO is barred by limitation, subsequent proceedings made pursuant to order u/s.92CA (3) does not survive. Tribunal held that when an order is passed without jurisdiction or beyond the permissible time, it is considered as null and void. The effect of passing a null and void order is that it is considered as non-est, meaning thereby, that it entails all the consequences of not having been passed at all and is

ignored for all practical purposes. Passing of the time barred order by the TPO, which is again a mandatory procedure prescribed under the Act, would be a non-curable defect, having the consequence as if it was not passed. In such circumstances, though the final assessment order would be saved but the addition on account of transfer pricing adjustment arising from the determination of the ALP of the international transactions by the TPO as emanating from his time barred order, would be unsustainable. (AY. 2010-11)

Swiss Re Global Business Solution India (P.) Ltd v. DCIT (2022) 94 ITR 196 (Bang)(Trib)

S. 94 : Transaction in securities –Short term capital loss-Sale of mutual funds-Units were purchased much before 3 months period prior to record date condition prescribed in clause (a) of section 94(7) was not satisfied and consequently provision of section 94 was not applicable on assessee-Commissioner (Appeals) was justified in giving relief of disallowance of STCL under section 94(7). [S. 94(7)

During year, assessee claimed exempt income on dividend, earned on units of mutual fund and further claimed short-term capital loss (STCL) on sale of same. Assessing Officer disallowed said STCL under section 94(7).Since units of mutual funds were purchased much before 3 months period prior to record date, condition prescribed in clause a of section 94(7) was not satisfied and consequently provision of section 94 was not applicable on assessee, thus, Commissioner (Appeals) was justified in giving relief of disallowance of STCL under section 94(7). Since transactions entered by assessee were with SEBI regulated mutual fund scheme of a very big and reputed asset management company and Assessing Officer had failed to bring any evidence on record about motive of assessee in indulging transaction to earn loss, intention of assessee could not be assumed to be earning loss with gloves in hand with a reputed AMC. (AY.2016-17)

Pranay Godha. v. ACIT (2022) 197 ITD 767 (Mum) (Trib.)

S. 113 : Tax-Block assessment-Search cases-Levy of Surcharge-Amendment by Finance Act, 2002-Amendment not retrospective-Search proceedings initiated in November 1995-Surcharge not Leviable.[S. 132, 245D, Art, 226]

Allowing the petition the Court held that since the search was carried out on November 23, 1995 and the proviso to section 113 of the Act, which provides for levy of surcharge, was introduced only with effect from June 1, 2002,thereforethe levy of surcharge could not be made applicable retrospectively. No surcharge was payable as a consequence of the block assessment.(AY. 1985-86 to 1996-97)

Karia Erectors Pvt. Ltd. v. UOI (2022) 444 ITR 86/ 287 Taxman 116 (Bom)(HC)

S.115BAA : Tax on income of certain domestic companies-Omission to file Form No 10IC-Directed to file an appropriate application in writing addressed to the Principal Chief Commissioner / Chief Commissioner making a request to permit it to file the Form 10IC electronically after condoning the delay in that regard so that the return of the Assessee can be re-processed or regular assessment can also be framed accordingly. [S.115BA, 115BAB, 119(2)(b), Form No 10IC,Art, 226]

Assessee was a domestic company. It filed its return of income for AY 2020-21 invoking the provisions of S.115BAA but without Form 10-IC which the Assessee was obliged to file electronically. In the absence of form 10IC, the return was assessed in regular form. Assessee submitted that omission to file 10IC electronically was not a deliberate act and thus requested the court to issue an appropriate direction to the authority concerned to now permit it to file Form 10IC electronically and thus re-process return of income for the AY 2020-21. Revenue contended that the legal remedy available to the Assessee is to make a request to the Principal Chief Commissioner or the Chief Commissioner in accordance with S.119(2)(b). Thus, the Court held that the Assessee should at the earliest file an appropriate application in writing addressed to the Principal Chief Commissioner / Chief Commissioner making a request to permit it to file the Form 10IC electronically after condoning the delay in that regard so that the return of the Assessee can be re-processed or regular assessment can also be framed accordingly. (AY. 2020-2021)

Rajkamal Healds and Reeds Pvt. Ltd. v. ADIT (2022) 211 DTR 275 / 325 CTR 476 (Guj)(HC)

S. 115BAA: Tax on income of certain domestic companies-Levy of tax @ 30% instead at concessional rate @ 22 %-Return of income-Last date for filing Form No. 10IC for AY 2020-21-Extended to March 31, 2021-By virtue of the Taxation and Other Laws (Relaxations and Amendments of Certain Provisions) Act 2020-Entitled to concessional rate @ 22%. [S.115BAA(5), 139(1), Taxation and Other Laws (Relaxations and Amendments of Certain Provisions) Act 2020, S. 3(1)]

Where the last date for filing of return of income for AY 2021 was extended to March 31, 2021; however, the last date for filing of Form No. 10IC to claim beneficial rate of tax at 22 per cent under section 115BAA of the Income-tax Act, 1961 was only up to 15th February 2021, it was held that the general scheme of timeframe prescribed under the Income-tax Act, 1961 has to make way for the specific relaxation provisions under the Taxation and Other Laws (Relaxations and Amendments of Certain Provisions) Act 2020 (Relaxation Act). The time permitted for filing of Form 10-IC, by virtue of section 3(1)(b) of Relaxation Act, must be treated as March 31, 2021. Allowing the appeal the Tribunal held that the assessee is entitled to concessional rate@ 22% as peer section 115BBA of the Act. (AY.2020-21)

Suminter India Organics (P.) Ltd. v. DCIT (2022) 196 ITD 370 (Mum) (Trib)

S. 115BBC : Anonymous donations – Details of donors with names address and confirmation letters provided – Mere absence of PAN the donations cannot be assessed as anonymous donations .[S. 13]

Held that the assessee had provided details of 2300 donors along with names and addresses of donors before Assessing OfficerFurthermore, confirmation letters from donors were also provided to Assessing Officer and donations were made either by cheque or DD or through other banking channels . Mere absence of PAN in confirmation letters of donors would not give rise to suspicion that donations received by assessee were anonymous donations and maintenance of name and address details of contributors would be a sufficient document as prescribed under section 115BBC . Since the assessee established identity of donors as provided under section 115BBC, donations received could not be categorized as anonymous donations and could not be subjected to tax as per provisions of section 115BBC of the Act . (AY. 2016-17)

ACIT v. Siddhartha Academy of General & Technical education (2022) 216 DTR 203 / 218 TTJ 899/ 141 taxmann.com 287 (Vishakha)(Trib).

S. 115BBC : Anonymous donations –Religious trust-Survey-Cash deposited-Failure to explain the source-Addition cannot be made in the assessment of religious trust [S. 11, 12, 68]

Assessee-trust was established wholly for religious purposes. During survey conducted at premises of assessee, it was found that assessee deposited cash amounting to Rs. 2.90 crore in its bank accounts. Assessee claimed that said cash was voluntary contribution received mainly for construction of temple from followers of religious heads. Assessing Officer considered submission of assessee and opined that assessee did not maintain any record of identity indicating name and address of persons making said donations and further, no details were provided of person depositing above sum in bank account.Assessing Officer thus, held that cash donation received was from unexplained sources and unidentifiable persons and accordingly, additions were made under section 68. Held that since provisions of section 115BBC were enacted to tax such donations in hands of certain charitable trust and institutions at rate of 30 per cent however, sub-section 2(b) excludes trust established wholly for religious and charitable purpose from rigors of that section and, thus, no additions could be made under section 68. (AY. 2017-18)

DCIT v. Jayananad Religious Trust. (2022) 197 ITD 810 (Mum) (Trib.)

S. 115BBE : Tax on specified income -Cash credits - Collection found recorded in notebook pertaining to business- Directed to be treated as business income and not as cash credits [S. 68 , 69 69A , 69B]

Held that the asseessee explained the nature and source of the amount found recorded in a note book that the entries in the said memo pertained to his business concern, the said amount could not be treated as undisclosed income under S. 68 and the tax liability could not be computed under the provisions of S. 115BBE of the Act. (AY. 2017 -18)

Harish Sharma v. ITO (2022) 215 TTJ 267 (Chd)(Trib)

S. 115BBE: Tax on specified income – Search - Unexplained expenditure — Diagnostic Centre — Additional income offered as business income – Referral fees – Unaccounted expenditure – additional income cannot be taxed at special rate – Current years loss is allowed to be set off- Reasons recorded cannot be based on conjectures and surmises . [S. 69C, 153A]

Held that the additional income offered had been assessed under the head "Business income" while completing the assessment under section 143(3) read with section 153A of the Act for the assessment years 2012-13 to 2017-18. The director in his statement had clearly stated that the source of cash spent for referral fees was the receipts from the patients who came to the assessee for various scans and tests and that these receipts were booked as sales in the books of account. Thus, it was clearly established by the assessee that the unaccounted expenditure paid towards referral fees was sourced through the business receipts of the assessee during the course of business. Under section 69C , when an assessee offers no explanation or the explanation offered is not satisfactory in the opinion of the Assessing Officer, the amount of such expenditure is to be taxed as income under section 69C of the Act. The satisfaction to be recorded by the Assessing Officer should not be objective satisfaction exercised at his discretion, but a subjective satisfaction on the basis of objective material and such satisfaction must be reflected in the reasons recorded in writing while exercising the power.

In the case of the assessee which was in the business of running a diagnostic centre, its only source of income was the receipts from patients which were stated to be the source for the unexplained expenditure. The Assessing Officer had not brought any contrary material on record to state that the source for the expenditure was other than from business income. He had formed his opinion based on conjectures and surmises. While exercising quasi-judicial functions, the administrative authorities have to reach satisfaction on the basis of material available and not on conjectures and surmises. The test of reasonableness has to be satisfied which failed . Accordingly the additional income offered could not be taxed under section 115BBE . The assessee was allowed to set off the current year's loss against the additional income offered to tax as business income.(AY.2018-19)

Ragavs Diagnostic and Research Centre Pvt. Ltd. v. ACIT (2022)99 ITR 15 (SN)(Bang) (Trib)

S. 115BBE : Tax on specified income - Income from undisclosed Sources — Bogus purchases — Construction business —Confessional statement by suppliers - Accommodation entries of Bill trading without any supply of materials — Failure to file necessary evidence in support of purchases — Addition is justified.

The Tribunal held that the Payment by cheque itself was not sufficient evidence to prove the alleged bogus purchases when all other evidence was to prove a fact that purchases were bogus in nature.The assessee was a listed public limited company but had failed to offer any explanation as to why standard operating procedures for recording purchases were not followed in respect of purchases from those parties. Voluminous evidence gathered during the course of the search and post-search investigation, including statements recorded from parties, clearly indicated that the assessee had indulged in obtaining accommodation entries of bill trading without any supply of materials. The assessee had failed to counter the confession statement given by alleged suppliers that they never supplied any goods to the assessee, and further, they issued only bills against payments and returned cash to the assessee after deducting their commission. (AY. 2011-12 to 2014-15)

BGR Energy Systems Ltd. v. ACIT (2022)96 ITR 625 (Chennai) (Trib)

CIT v. Sasikala Raghupathy (Smt.) (2022)96 ITR 625 (Chennai) (Trib)

S.115BBE: Tax on specified income - Income from undisclosed sources - Advance payment returned by party in cash — No cogent documentary evidence — Creditworthiness to return amount in cash in lieu of cheque payments was not established — Addition is held to be proper.

The Tribunal held that with regard to the advance payment of Rs. 30 lakhs to PVS which was returned by him by way of cash to the assessee, in the absence of any cogent documentary evidence, the withdrawals from the bank account of PVS could not be accepted. The contention of the assessee that PVS had the creditworthiness to return the amount in cash to the assessee in lieu of the cheque payments received by him as an advance was not tenable. (AY. 2014-15)

ITO (IT) v. Bikkina Savitri Devi (Smt.) (2022) 96 ITR 30 (Trib) (SN) (Vishakha) (Trib)

S.115BBE: Tax on specified income-Survey-Undisclosed loan-Surrender of income-Statement retracted-Addition is deleted-Difference in closing stock-No evidence was found-Addition is deleted-Business income-Only source of income was business income, undisclosed income embedded in undisclosed business transactions would not attract section 115BBE-Undisclosed income attributable to excess cash from other sources would attract section 115BBE.[S.68, 69D, 133, 133A]

A survey was conducted at business premises of assessee-firm and assessee filed return surrendering sum of Rs. 1 crore. Assessing Officer held that during survey, statements of partners were recorded and certain amount was surrendered in respect of difference in unsecured loan. He made additions with respect to surrendered amount as undisclosed income on ground that amount surrendered during survey was more than amount surrendered while filing return. Assessee contended that statement recorded during survey had no evidentiary value as same was retracted and diary found from business premises was a dumb document. Held that additions were made solely on basis of recorded statement and loose papers/diary obtained during survey without any corroborative evidence. Impounded diaries merely contained names of persons and amounts-Held that statement recorded under section 133 would not have any evidentiary value and since no enquiry was conducted by Assessing Officer from any person named in alleged diary, additions made on account of loans and advances are deleted. Held that since no unaccounted sales/purchase invoices, unaccounted lorry receipt or unaccounted party ledgers were found during survey, in absence of valid documents, additions made in regard to excess stock is deleted. Held that only source of income is business income, undisclosed income embedded in undisclosed business transactions would not attract section 115BBE. Cash balance found from other undisclosed sources would attract section 115BBE, thus, undisclosed income attributable to excess cash would attract said section 115BBE. (AY. 2016-17)

Saaras Agro Industries. v. ACIT (2022) 197 ITD 567 (Indore) (Trib.)

S. 115JA : Book profit-Mining, production and generation of aluminium, generated power-Captive power plant (CPP) for internal consumption-Profits derived from CPP was to be reduced from book profits-Provision for liability in respect of post-retirement medical benefits and leave encashment determined as an accrued liability and computed on basis of actuarial valuation by assessee could not be included in its book profits.[S. 115JA(iv)]

Held that the assessee was entitled to reduce profits derived from its CPP from its book profits, while determining MAT payable under section 115JA of the Act. Followed CIT v. DCM Shriram Consolidated Ltd. [IT Appeal No. 1187 of 2005, dated 21-11-2008]. Provision for liability in respect of post-retirement medical benefits and leave encashment determined as an accrued liability and computed on basis of actuarial valuation by assessee could not be included in its book profits under section 115JA of the Act. (AY. 1997-98)

National Aluminium Company Ltd. v. CIT (2022) 287 Taxman 703 / 213 DTR 155/ 326 CTR 385 (Orissa) (HC)

S. 115JAA : Book profit - Deemed income - Tax credit -Allowability to amalgamated company- MAT credit earned by the amalgamating company has to be allowed in the hands of the amalgamated company. [S. 115JAA(7)]

Held that theMAT credit earned by the amalgamating company has to be allowed in the hands of the amalgamated company. (AY. 2013-14)

Capgemini Technology Services India Ltd. v. Dy. CIT (2022) 220 TTJ 409 (Pune) (Trib)

S. 115JAA : Book profit - Deemed income - Tax credit -Matter remanded for verification .

Tribunal held that payment of the taxes and allowing of credit thereon was a matter for verification by the Assessing Officer and the Assessing Officer was to verify and if the assessee was eligible for credit of taxes in the year under consideration under minimum alternate tax paid in earlier years, the claim of the assessee shall be considered in accordance with law. (AY. 2014-15)

Shipping Corporation of India Ltd. v. Dy CIT(LTU) (2022)96 ITR 32 (SN) (Mum) (Trib)

S. 115JAA : Book profit-Deemed income-Tax credit-Surcharge and cess part of Income-Tax available for adjustment against Minimum alternate tax credit.[S.115JB]

Tribunal held that, thatset off ofminimum alternate tax credit was eligible inclusive of surcharge and cess. The format of form ITR 6 prior to assessment year 2012-13 was designed in such a manner that the tax liabilities under normal provisions and minimum alternate tax provisions were computed without surcharge and cess. Form ITR 6 was amended from assessment year 2012-13 wherein the tax liability was computed including surcharge and cess. Therefore, post assessment year 2012-13 as the format of ITR 6 is so designed to compute minimum alternate tax credit automatically using the prescribed algorithm, i. e., the difference between tax liability and minimum alternate tax liability including surcharge and cess is a balancing figure. The issue was not debatable. The Assessing Officer was directed to allow set off of minimum alternate tax credit inclusive of surcharge and education cess and recompute the tax payable by the assessee.(AY.2014-15)

Tata Motors Ltd. v. Dy. CIT (LTU) (2022)93 ITR 714 (Mum) (Trib)

S. 115JB : Book profit-Provisions not applicable to Electricity Boards or similar entities totally owned by State or Central Government.

Dismissing the appeals of the Revenue, the SupremeCourt held that provision of section 115JB would not apply to Electricity Boards or similar bodies, which are totally owned by the Government, either State or Central, while making the assessment of the tax payable by them under the Act.(AY.2002-03 to 2005-06, 2008-09)

Dy.CIT v.Kerala State Electricity Board (2022)447 ITR 193 / 288 Taxman 728 / 217 DTR 161/ 328 CTR 265 (SC)

Editorial : Kerala State Electricity Board v. Dy. CIT (2010) 329 ITR 91 / (2011) 196 Taxman 1 (Ker)(HC)

S. 115JB : Book profit-Banking Companies-Prior to amendments by Finance Act, 2012,provision is not applicable to Banking companies.[Banking Regulation Act, 1949]
Dismissing the appeal of the Revenue the Court held that provisions of section 115JB, 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. Followed CIT-LTU v. Union Bank of India (2019) 105 taxman.com 253 / 263 Taxman 685 (Bom)(HC)

PCIT v. Central Bank of India. (2022) 142 taxmann.com 183 (Bom)(HC)

Editorial: Notice was issued in SLP filed by Revenue, PCIT v. Central Bank of India. (2022) 289 Taxman 1 (SC)

S. 115JB : Book profit-Disallowance made under section 14A could not be added for the purpose of computing book profits [S. 14A]

Dismissing the appeal of the Revenue the Court held that disallowance made under section 14A could not be added for purpose of computation of book profit.Followed PCIT v. Atria Power Corpn.Ltd(2022) 138 taxmann.com 270 (Karn)(HC) (AY. 2010-11)
PCIT v. Atria Power Corporation Ltd(2022) 142 taxmann.com 412 (Karn)(HC)

Editorial: SLP of Revenue dismissed, PCIT v. Atria Power Corporation Ltd. [2022] 289 Taxman 111 (SC)

S. 115JB : Book profit-Minimum alternate tax-Banking companies-Provision is not applicable. [Companies Act, 1956, S. 211(1)]
Dismissing the appeal of the Revenue the Court held that where Companies Act, 1956 has excluded insurance, banking companies or electricity generating or supplying companies from purview of section 211(1) of Companies Act, 1956, provisions of section 115JB would not be applicable to bank whose books of account were drawn in conformity with Banking Regulation Act, 1939. (AY. 2008-09)
CIT v. Karnataka Bank Ltd.(2022) 142 taxmann.com 64 (Karn)(HC)
Editorial : SLP granted to Revenue, CIT v. Karnataka Bank Ltd.(2022) 288 Taxman 725 (SC)

S. 115JB : Book profit-Minimum alternate tax-Electricity companies-Provisions of section 115JB as it stood prior to its amendment by virtue of Finance Act, 2012, would not be applicable to an electricity generating company.

Dismissing the appeal of the Revenue the Court held that provisions of section 115JB as it stood prior to its amendment by virtue of Finance Act, 2012, would not be applicable to an electricity generating company. (AY. 2003-04)
PCIT v. Ajmer Vidyut Vitran Nigam Ltd(2022) 140 taxmann.com 660 (Raj)(HC)

Editorial : Notice issued in SLP filed by Revenue, PCIT v. Ajmer Vidyut Vitran Nigam Ltd(2022) 288 Taxman 485 (SC)/ SLP dismissed PCIT v. Ajmer Vidyut Vitran Nigam Ltd(2023) 290 Taxman 5 (SC)

S. 115JB : Provisions of section 11JB will not apply to the taxpayer being a corporation established under Damodar Valley Corporation Act, 1948.[Damodar Valley Corporation Act, 1948]

The provisions of section 115JB would be applicable only to entities registered and recognised to be companies under the Companies Act, 1956. Thus, in the case of taxpayer being a corporation established underDamodar Valley Corporation Act, 1948 and not registered under the Companies Act, 1956, the provisions of section 115JB would not apply. Explanation 3 to section 115JB inserted by the Finance Act, 2012 w.e.f. 01.04.2013 has prospective effect and thus would apply only from AY. 2013-14 onwards and not for the year under consideration. (AY. 2010-11)

PCIT v. Damodar Valley Corporation (2022) 209 DTR 401 /324 CTR 462 (Cal.) (HC)

S. 115JB : Book profit-Amounts disallowed under section 14A could not be added to net profit while computing book profit.[S. 14A]

Held that the amounts disallowed under section 14A could not be added to net profit while computing book profit under section 115JB of the Act. (AY 2013-14)

PCIT v. J.J. Glastronics (P) Ltd. (2022) 287 T axman 610 (Karn.)(HC)

S. 115JB : Book profit-Electricity Company-Company engaged in generation and supply of electricity-Not required to prepare its profit and loss account and balance sheet as per Parts II and III of Schedule VI of Companies Act-Provision of book profit not applicable.

Dismissing the appeal of the Revenue the Court held that since assessee was governed and ruled by different Acts and Rules, it was not required to prepare its profit and loss account and balance sheet as per Parts II and III of Schedule VI of Companies Act; hence, provisions of section 115JB could not be invoked. Order of Tribunal affirmed. (AY. 2010-11)

PCIT v. Atria Power Corporation Ltd. (2022) 138 taxmann.com 270 (Karn)(HC)

Editorial: SLP granted to Revenue; PCIT v. Atria Power Corporation Ltd. (2022) 286 Taxman 636 (SC)

S. 115JB : Book profit-Statutory corporation-Provision is not be applicable to a statutory corporation constituted by notification of State of Kerala.[Electricity Supply Act, 1948, S. 5]

Dismissing the appeal of the Revenue the Court held that provision is not be applicable to a statutory corporation constituted by notification of State of Kerala, pursuant to powers vested in it by virtue of section 5 of Electricity Supply Act, 1948. Followed Kerala State Electricity Board v. Dy.CIT (2010) 329 ITR 91 / (2011) 196 taxman 1 (Ker)(HC) (AY. 2006-07 to 2009-10)

PCIT v. Kerala State Electricity Board (2022) 137 taxmann.com 85 (Ker)(HC)

Editorial: Notice issued in SLP filed by Revenue, PCIT v. Kerala State Electricity Board. (2022) 286 Taxman 438 (SC)

S. 115JB : Book profit-Retention money-Not to be included in computing book profits.
Dismissing the appeal of the Revenue the Court held that retention money is not to be included in computing book profits. Followed CIT v. Simplex Concrete Piles (India) (P.) Ltd. (1989) 179 ITR 8 (Cal)(HC). (AY. 2013-14)
PCIT v. MC Nally Sayaji Engineering Ltd. (2022) 286 Taxman 673 (Cal)(HC)

S. 115JB : Book profit-Not applicable to banking companies.

Provisions of section 115JB do not apply to banking companies.(AY. 2012-13)

CIT LTU v. Canara Bank (2022) 285 Taxman 420 (Karn) (HC)
Editorial : Notice issued in SLP filed by Revenue,CIT v. Canara Bank (2022) 287 Taxman 462/ 114 CCH 321 (SC)

S. 115JB : Book profit – Gross income and total income Nil- Not paying dividend-Provision is not applicable .
Held that since the assessee's gross total income and total income of the assessee were nil and no taxes were payable, thus, the provisions of section 115JB were not applicable. (AY. 2012 -13)
Sasamusa Sugar Works Pvt. Ltd. v .Dy. CIT (2022)98 ITR 235 (Kol) (Trib)

S. 115JB : Book profit – Adjustment of disallowance under S.. 14A cannot be made while computing book profits .
Held that Adjustment of disallowance under S.. 14A cannot be made while computing book profits . (AY. 2008-09)
ACIT v. J. K. Fenner (India) Ltd. (2022) 220 TTJ 595 (Chennai)(Trib)

S. 115JB : Book profit – Fringe benefit tax- Allowable as deduction [S. 40(a)(ic)]
Held that the CBDT has clarified vide Circular No. 8 of 2015, that the prohibition for claiming deduction in respect of FBT does not apply in the computation of book profits and therefore, the same has to be allowed as deduction in computation. (AY. 2013-14)
Capgemini Technology Services India Ltd. v. Dy. CIT (2022) 220 TTJ 409 (Pune) (Trib)

S. 115JB : Book profit – Provision for gratuity relating to earlier years – Adjustment is not justified – Order of Assessing Officer affirmed . [S. 143(3)]
Held that the provision for gratuity relating to earlier years is provided in the books of accounts as item of prior period expenses, then same needs to be provided in the P&L are below the line and hence, book profit under s 115JB is to be computed by taking net profit as per P&L are before considering deduction claimed for prior period item being provision for gratuity relating to earlier years. Order of the Assessing Officer is affirmed. (AY. 2006 -07)
International Bakery Products Ltd. (2022) 217 TTJ 494 / 214 DTR 133 (Chennai)(Trib)

S. 115JB : Book profit – Adjustment of disallowance cannot be made while computing book profits [S. 14A , R,8D]

Held, that the adjustment of disallowance under section 14A of the Act could not be made while computing the book profits under section 115JB of the Act.(AY. 2009-10)

Nahar Industrial Enterprises Ltd. v. Dy. CIT (2022) 99 ITR 562 (Chad) (Trib)

S. 115JB : Book profit – Failure to issue notice – Computation is valid.

Held that the computation of income under section 115JB of the Act was automatic when the condition laid down in section 115JB were satisfied. Order passed without giving a show cause notice is not violative of principle of natural justice (AY. 2009-10, 2010-11)

Karnataka State Beverages Corporation Ltd. v. ACIT (2022) 99 ITR 325 (Bang) (Trib)

S. 115JB : Book profit – Sick Industrial Company —Net worth of assessee-company turning positive in assessment year in question Not eligible for exclusion of profits from chargeability of book profits tax — Even though time-frame of rehabilitation scheme not completed [S. 115JB , Exppln.1(vii), Sick Industrial Companies (Special Provisions) Act, 1985, S. 3(1)(o)]

Dismissing the appeal, the Tribunal held that th clause (vii) of Explanation 1 to section 115JB of the Act provides for exclusion from book profits of the profits of a sick industrial company from the assessment year in which the company becomes a sick company and ending with the assessment year during which the entire net worth of such company becomes equal to or exceeds the accumulated losses. The net worth of the assessee-company had turned positive in the assessment year in question. Therefore, for this year, the assessee was not eligible for exclusion of its profits from the chargeability of book profits tax. Whenever the provisions of law are clear and unambiguous they should be given full effect and should be read as they are without adding or subtracting anything. The Assessing Officer was correct in not excluding the book profits earned by the assessee from the provisions of section 115JB of the Act . Order of CIT(A) is affirmed . (AY.2012-13)

Supertex Industries Ltd. v. Dy. CIT (2022)99 ITR 33 (SN)(Mum) (Trib)

S. 115JB: Book profit – Shipping company -Profits derived by tonnage tax is excluded from book profits.[S. 115VO]

The Tribunal held that since the provisions of section 115VO of the Act provided that the profit derived by the tonnage tax company was to be excluded from the book profits of the company for the purpose of section 115JB of the Act, the Commissioner (Appeals) was justified in directing the Assessing Officer to exclude the income derived from shipping activities from the computation of book profits.(AY.2012-13 to 2014-15)

Dy. CIT v .Jagson International Ltd. (2022) 97 ITR 176 (Delhi) (Trib)

S. 115JB : Book profit – Bad and doubtful debts – Required to be added back .

Held that provision for bad and doubtful debts, falls in cl. (i) and not under cl. (c) of Expin. 1 to s. 115JB(2), therefore the same is required to be added back while computing book profits . CIT v . Tainwala Chemicals and Plastics India Ltd. (2013) 215 Taxman 153 (Bom) distinguished. (AY.2003-04)

Dy. CIT v. Piramal Enterprises Ltd. (2022) 216 TTJ 802 (Mum)(Trib)

S. 115JB : Book profit – Provision for bad and doubtful debts – Added back while computing book profit .[S.115HB(2)]

Held that clause (i) of Explanation to s.115JB(2) inserted by the Finance (No. 2) Act, 2009 retrospectively w. e. f. 1st April, 2001 specifically mandates that provision for diminution in value of any asset should be added back while computing book profits under s. 115JB. Admittedly, the provision for doubtful debts instant case does not represent provision made for diminution in value of asset .Case does not fall under cl. (c) of Expln. 1 to s. 115JB(2)— Issue in dispute falls in cl. (i) of Explanation to s. 115JB(2). Therefore, provision for bad and doubtful debts is required to be added back while computing book profit under s. 115JB. Dismissing the appeal of the assessee, the Tribunal held that Assessee having made provisions for bad and doubtful debt, the case falls in cl. (i) and not cl. (c) of Expln. to s. 115JB(2) and therefore, the same is required to be added back while computing book profit u/s. 115JB. (AY. 2003-04)

Piramal Enterprises v. Addl. CIT (2022) 216 TTJ 802 (Mum)(Trib)

Editorial: CIT v. Tainwala Chemicals and Plastics India Ltd. [2013] 215 Taxman 153 (Bom.) (HC) distinguished.

S. 115JB : Book profit –Foreign company-Section 90(2), overrides the provision of MAT-MAT provisions could not be applied even to foreign companies which have PE in India as it would be contrary to basic foundation of applicable treaty [S. 90(2), Companies Act, 1956, Part II and Part III of Schedule-VI]

Held that foreign company are not prepared in accordance with Part II and Part III of Schedule-VI of Companies Act, 1956 and their accounts are not being laid in annual general meeting before shareholders of company for approval, provisions of section 115JB cannot be made applicable to a foreign company. Accordingly the MAT provisions cannot apply where tax treaty is invoked as provisions of section 115JB are only subordinate to section 90(2) and section 90(2) overrides section 115JB. MAT provisions could not be applied even to foreign companies which have PE in India as it would be contrary to basic foundation of applicable treaty. (AY. 2015-16)

ACIT (IT) v. Credit Suisse AG. (2022) 197 ITD 209 (Mum) (Trib.)

S. 115JB : Book profit-Sick company-Adjustment of brought forward business losses or depreciation would start after it become non-sick company. [S.115JB(2)]

When a company is declared a sick company profits of a sick company are excluded from purview of section 115JB. Assessee-company was declared a sick company during period 31-3-2000 to 31-3-2006, positive Book Profits would start arising to assessee only from year ending 31-3-2010 after it become non-sick company and accordingly, adjustment of brought forward business losses or depreciation would start from that year only. Assessing Officer was to be directed to grant adjustment as claimed by assessee during year (AY. 2014-15)

Kannappan Textile Mill (P.) Ltd. v. ACIT (2022) 197 ITD 189 / (2023) 224 DTR 57 (Chennai) (Trib.)

S. 115JB : Book profit-Disallowances made under section 14A read with rule 8D could not be applied to provision of section 115JB-Exempted income-Disallowance is restricted on an ad-hoc basis at rate of 1 percent of exempt income [S. 14A, R.8D]

Held that disallowance made under section 14A read with rule 8D can not be made while determining expenses as mentioned under clause (f) to Explanation 1 to section 115JB. However, since there is no mechanism given under clause (f) to Explanation 1 of section

115JB to workout expenses with respect to exempted income, disallowance was to be limited on an ad hoc basis at rate of 1 per cent of exempted income. (AY. 2006-07)
DCIT (OSD v. Vishal Export Overseas Ltd. (2022] 197 ITD 459 (Ahd) (Trib.)

S. 115JB : Book profit-Exempt income-Disallowance of expenditure-Disallowance not to be added while computing book profit [S. 14A,R. 8D].
Held that disallowance computed under section 14A could not be added while computing book-profit. (AY. 2012-13)
Spandana Sphoorty Financial Ltd. v. DCIT (2022) 196 ITD 217/ 217 TTJ 837 / 214 DTR 121 (Hyd) (Trib.)

S. 115JB : Book profit-Disallowance under section 14A could not be added back to book profits.[S. 14A]
Held that disallowance under section 14A could not be added back to book profits. (AY. 2005-06)
ACIT v. Geometric Software Solutions Co. Ltd. (2022) 196 ITD 466 (Mum) (Trib.)

S. 115JB : Book profit-Special category States-Not to be reduced [S.80IC]

For purpose of calculation of tax liability under section 115JB, there is no scope for reducing book profit by the amount of deduction under section 80-IC. (AY. 2013-14, 2015-16)
Chheda Electricals and Electronics (P.) Ltd. v. DCIT (2022) 195 ITD 354 (Pune) (Trib.)

S. 115JB : Book profit-Capital loss debited to profit and loss account-Qualification by Auditor-Neither eligible for deduction under normal provisions nor under alternate provisions of taxation. [S.28(i), 37(1)]
Held that the Assessee is not entitled to reduce book profit by capital loss debited to P&L account which was the subject matter of qualification by auditors as the such capital loss was neither eligible for deduction under normal provisions nor under alternate provisions of taxation. (AY. 2014-15)
DCIT v. Railtel Corporation of India Ltd. (2022) 195 ITD 665 (Delhi) (Trib.)

S.115JB : Book profits-Computation-Expenses on initial Public Offer-Assessing Officer to consider book profits as per treatment given in finalisation of accounts.

Held that with regard to whether expenditure on initial public offer shall be allowable while computing the book profits under section 115JB, the Assessing Officer was directed to consider Explanation 1 to section 115JB and book profits taking into the treatment given to the receipt of the share capital in finalization of the accounts..(AY.2013-14, 2014-15)

ACIT v. PC Jewellers Ltd. (2022)93 ITR 244 (Delhi)(Trib)

S. 115JB: Book profit-Audit qualification-The Assessing Officer cannot ignore or override the Auditors report while determining the Book profit-Entitled for reduction towards an item which is mentioned as an audit qualification in the

statutory audit report while computing book profit. [S. 145, Companies Act, 1956, S 211(6)]

The assessee received the demand notice from Municipal Corporation for payment towards the arrears of property tax. The assessee capitalised the said amount. The Auditor qualified in his report stating that the said property tax is a revenue expenditure hence need to be debited too Profit and loss account in accordance with accounting standards generally accepted in India. The assessee filed revised computation based on the Auditors qualification and reduced the amount while computing Book Profit u/s 115J of the Act. The AO did not allow the said adjustment which was confirmed by the CIT(A). On appeal the Tribunal held that the Assessing Officer cannot ignore or override the Auditors report while determining the Book profit. The assessee is entitled for reduction towards an item which is mentioned as an audit qualification in the statutory audit report while computing book profit. Followed Mukund Ltd v. ITO (2019) 174 ITD 605 (Mum)(Trib). (ITA No. 1953 /Mum/ 2020 / 1954/Mum/ 2020/ 11/Mum/ 2021/ 12 /Mum/ 2021 Bench 'E' dt. 27-6 2022)(AY. 2015-16, 2017-18)
Sheth Developers Pvt Ltd v.Dy.CIT(Mum)(Trib) www.itatonline.org

S. 115JC : Special provisions for payment of tax by certain persons other than a company- Housing project -Does not excludes its application in respect of housing projects approved under section 80IB(1) prior to its insertion – Appeal was dismissed .[S.80IB(1), 800IB(10)]
Assessee builder and developer developed a housing project. Assessee computed its income under regular provisions and also adjusted total income under section 115JC .Since latter was higher than former, assessee declared adjusted income .The Assessing Officer disallowed the claim . CIT(A) allowed the claim . On appeal the Tribunal held that the Assessee had wrongly applied section 115JC because housing project commended in an earlier year. On appeal the Tribibunal held that section 115JC does not excludes its application in respect of housing projects approved under section 80IB(1) prior to its insertion . (AY. 2013-14)
ACIT v. Vijay Tukaram Raundal (2022) 219 TTJ 641 /218 DTR 129 / (2023) 147 taxmann.com 53 (Pune)(Trib)

S. 115-O : Domestic companies-Tax on distributed profits-Not liable to pay dividend distribution tax on dividend paid by it to share holders [Art, 226, SIDBI Act, 1989, S. 29(2), 50]

Assessee was a financial institution established under SIDBI Act. It had transferred certain amount in accordance with provision of section 29(2) of SIDBI Act out of its profit and made a deposit to meet its liability towards payment of dividend to its shareholders. Revenue was of view that any amount declared or distributed or paid by assessee by way of dividend was liable for additional tax by way of dividend distribution tax under provisions of section 115-O of the Act. Assessee paid such additional tax, however, under protest. The assessee filed writ petition and sought for a refund of said additional tax paid contending that tax on payment of dividend as per section 115-O was exempted by virtue of section 50 of SIDBI Act and, therefore, assessee was entitled to refund of such tax paid under protest. Allowing the petition the Court held that section 50 of SIDBI Act exempts SIDBI from paying dividend distribution tax on dividends under section 115-O of Income-tax Act, 1961, and

thus, assessee was not liable to pay same on dividends paid by it to shareholders. Accordingly the additional tax already paid by assessee under protest was directed to be refunded. (AY. 1997-98 to 2000-01)

Small Industries Development Bank of India v. CBDT (2022) 441 ITR 80/ 285 Taxman 113/ 209 DTR 171/ 324 CTR 317 (Bom) (HC)

S. 115VC : Shipping business - Presumptive Tax — Tonnage Tax — Assessee Part Owner of Qualifying Ship — Entitled to benefit of tonnage tax claimed according to definite and ascertainable share in terms of agreement with other co-Owners [S. 115VH]

The Tribunal held that under the provisions of section 115VH of the Act, where a qualifying ship is operated by two or more companies by way of joint interest in the ship or by way of an agreement for the use of ship and their respective shares are definite and ascertainable, the tonnage income of each such company shall be an amount equal to a share of income proportionate to its share of that interest. The assessee had claimed the benefit of tonnage tax, according to the definite and ascertainable share of the assessee in terms of the agreement with other co-owners. Therefore, the assessee was entitled to the benefit of tonnage tax under section 115VC of the Act. (AY. 2013-14 to 2017-18)

ACIT v. Buhari Holdings Pvt. Ltd. (2022)96 ITR 41 (SN) (Chennai) (Trib)

S. 115VC : Shipping business -Presumptive tax — Tonnage tax - Core Activity — Income from excess provision written back — To be included in turnover of core activity — Reimbursement from managed vessels — Matter remanded for verification. [S. 115VJ]

It was held that the issue of excluding the amount of reimbursement of overhead expenses for managed vessels, and excess provision written back was raised in the case of the assessee for the first time in the AYs 2005-06 and 2006-07 before the Tribunal, which directed the Assessing Officer to include the income from excess provision written back in the turnover of the core activity of shipping and restored the matter regarding reimbursement for managed vessels for decision afresh after verifying the details. Thus the Assessing Officer was to include the amount of excess provision written back for the purpose of the turnover of the core activity and decide the issue of inclusion of reimbursement from managed vessels for the purpose of the turnover of core activity after verifying the claim of the assessee. It was further held that the issue of disallowance of deduction of administrative expenses against the income from other sources has been held against the assessee for AYs 2005-06 and 2006-07 on the ground that the income could not be said to have earned by the assessee by carrying on any separate business activity other than the tonnage tax business as envisaged in section 115VJ of the Act. The disallowance called for no interference. (AY. 2014-15)

Shipping Corporation Of India Ltd. v. Dy CIT(LTU) (2022)96 ITR 32 (SN) (Mum) (Trib)

S. 115VD : Shipping business - Qualifying ship – Exemption- Tonnage Tax- Ship not offshore Installation- CIT (A) justified in allowing exemption.

The Tribunal held that the vessels were consistently registered under Merchant Shipping Act, 1958 and had a valid certificate. Hence, there was no infirmity in the order of the CIT (A) in deleting the disallowance made by the Assessing Officer disallowing the claim of exemption under tonnage tax system. (AY.2012-13 to 2014-15)

Dy. CIT v. Jagson International Ltd. (2022) 97 ITR 176 (Delhi) (Trib)

S. 115WB : Fringe benefits-Limitation –Additional grounds-Notice issue under section 143(2) after six months from the end of relevant financial year-Notice is invalid-Tribunal is justified in admitting additional grounds [S. 115WE(2), 143(2), 254(1)]

A notice under section 143(2) read with section 115WE(2) was issued upon assessee on 17-9-2009 for assessment year 2008-09 and further assessment was completed. Tribunal set aside order of assessment on ground that there was no valid notice under section 143(2) within stipulated period of six months from end of assessment year of furnishing of return. On appeal the Court held that the return of income was filed by assessee on 29-9-2008 and six months period to issue notice was available to Assessing Officer till 30-9-2008 Therefore, notice dated 17-9-2009 could not be construed as notice under section 143(2) for purpose of assessment under section 143 and same was invalid.Order of Tribunal is affirmed. (AY. 2008-09)

PCIT v. GJ Trading (P) Ltd. (2022) 218 DTR 225 / 328 CTR 865 / 145 taxmann.com 279 (Telangana) (HC)

S. 119: Central Board of Direct Taxes-Condonation of delay-Pending application-Circular dated 9-6-2015(2015) 374 ITR 25 (St)prescribing limitation period of six years-Cannot have retrospective effect-Order Rejecting application on basis of circular set aside-Matter Remanded to Board [S. 54EC, 119(2)(b), 154, 264, Art, 226]

The AO denied the exemption u/s 54EC of the Act on the ground that there was delay in investing in Bonds. The assessee filed a revision petition under section 264 before the Commissioner challenging the levy of tax on capital gains with a prayer to condone the delay of two days in investing Rs. 25 lakhs in bonds contending that he was in Australia at that time and accordingly, there was a short delay for advising the remittance towards the bond. The Commissioner declined to condone the delay of two days in making the investment in specified bonds. The assessee filed an application on May 24, 2011 before the Central Board of Direct Taxes to direct the Assessing Officer to consider the application under section 154 and grant appropriate relief. The Board by an order dated December 13, 2017 rejected the application. The writ petition challenging this order was dismissed by the court mainly referring to clause 8 of the Board's circular dated June 9, 2015 which stated that the circular would cover all such applications and claims for condonation of delay under section 119(2)(b) pending as on the date of issue of the circular. On appeal

held, that had the Central Board of Direct Taxes considered the application filed by the assessee under section 119(2)(b) on May 24, 2011 before issuance of the circular dated June 9, 2015 it would not have been rejected on the ground of delay, i. e., beyond the period of six years as specified in the Circular. No provisions of the Act and Rules prescribe the period of limitation for filing the application under section 119(2)(b) and it was only by virtue of such circular that the period of limitation of six years had been prescribed for the first time. Though the validity of the circular was not challenged directly by the assessee, that applicability of the circular was the main issue before the court and if the matter was perceived from the angle of delay caused in adjudicating the application filed on May 24, 2011 before the Circular dated June 9, 2015 (2015) 374 ITR 25 (St) came into force, the resultant effect would be different. The assessee should not suffer where no default was committed by him in submitting the application under section 119(2)(b) on May 24, 2011, i. e., when there was no period of limitation prescribed. No application could be denied on

technical grounds. The application was not disposed of within a reasonable period. The order in the writ petition was set aside and the matter was remanded to the Board for reconsideration of the application and to take an appropriate decision on the merits in accordance with law. Matter remanded to Central Board of Direct Taxes.(AY. 2003-04)

R. Ramakrishnan v. CBDT (2022)446 ITR 308 / 219 DTR 143 / 329 CTR 533 (Karn)(HC)

S. 120 : Jurisdiction of income-tax authorities-Returned income less than of 30 lakhs-Jurisdiction of Assessing Officer-Assessment made by the Assistant Commissioner is without jurisdiction-Bad in law [S. 127(1), 143(2), 143(3)]

Assessee contested jurisdiction of Assistant Commissioner to frame assessment order under section 143(3) on ground that returned income of assessee was less than prescribed limit of Rs. 30 lacs and thus, jurisdiction to frame assessment lies with Income Tax Officer. On appeal the Tribunal held that Department could not produce any document to show that case was transferred by competent authority from Income Tax Officer to ACIT. Notice under section 143(2) issued by ACIT was beyond his jurisdiction the order was quashed. (AY. 2016-17)

Anderson Printing House (P.) Ltd. v. ACIT (2022) 192 ITD 548 (SMC) (Kol) (Trib.)

S. 127 : Power to transfer cases-Udaipur to Delhi-Opportunity of hearing not granted-Transfer order was set aside. [Art. 226]

Commissioner by an order passed under section 127 transferred assessment file of assessee from circle Udaipur to Circle Delhi without providing any opportunity of hearing. On writ the high court set aside the order of the Commissioner.

Murliwala Agrotech (P.) Ltd.v. UOI (2022) 289 Taxman 702 /216 DTR 237 / 327 CTR 662 (Raj)(HC)

S. 127 : Power to transfer cases-Assessee aware of real reason for transfer of case-Natural justice-Public interest can justify Violation of principle of Audi Alteram Partem. [Art, 226]

Held that the assessee was well aware of the fact that the transfer of his case was taking place in public interest to ensure smooth and uninterrupted search operation being conducted by the Revenue which was only possible when the records of the principal contractors and the sub-contractor (the assessee) were at the same place. The consolidation of the records of the principal contractors and sub-contractor at Hyderabad was necessary and in public interest for a proper and lawful search operation. The order for transfer of case was valid.

Aditya Tripathi v. PCIT (2022) 447 ITR 469 / 326 CTR 833/ 287 Taxman 144 (MP)(HC)

S. 127 : Power to transfer cases-Order of transfer to facilitate investigation in to evasion of tax-Order of transfer is valid [S. 124(1), Art, 226]

Dismissing the petition the Court held that the assessee was suspected to be involved in dubious transactions, whereby as an angadia he was found to be habitually claiming ownership of cash seized at various places across the country. In fact, the request seeking transfer had been made from two offices of the Department, i. e., Principal CIT, Mumbai and Kolkata. The materials on record showed that the main purpose of the transfer on the ground of centralization of cases was to investigate the dubious transactions of the assessee with various related entities during the relevant period. The order of transfer could not be said to be ex facie perverse. It was valid.(AY.2014-15 to 2019-20)

Kamlesh Rajnikant Shah v. PCIT (2022)447 ITR 196 (Guj)(HC)

S. 127 : Power to transfer cases-Transfer from Bhopal to Hyderabad-Transferred for consolidating records of principal contractors and sub-contractor-In public interest for a lawful search operation-Transfer is valid [Art, 226]

Assessee challenged transfer order on ground that there was variance in reasons assigned by revenue in show cause notice and impugned order of transfer, thus, breach of reasonable opportunity. Dismissing the petition the Court held that the assessee knew that case was being transferred for consolidating records of principal contractors and sub-contractor (assessee) at one place (Hyderabad), thus principle of audi alteram partem stood complied with by implication and ground of variance did not actually exist.

Aditya Tripathi v. PCIT (2022) 287 Taxman 144/ 214 DTR 201/ 326 CTR 833 (MP) (HC)

S. 127 : Power to transfer cases-Opportunity of hearing should be provided-Reason for transfer should be recorded-Transfer of case without notice and reasons for transfer is not valid.[Art, 226]

Allowing the petition the Court held that transfer of cases under section 127(2) may cause some inconvenience to assessee and, therefore, any such order has to be passed after hearing and by giving reasons. Since no show-cause notice was issued to the assessee assigning reasons for transfer under section 127(2) of the Act nor that at no point of time was the assessee served with a copy of the order passed under section 127(2) of the Act. The order of transfer dated July 8, 2021 passed under section 127(2) of the Act was quashed and set aside.(AY.2017-18, 2018-19)

Nagindas Kasturchand and Bros. v. PCIT (2022)445 ITR 50/ 288 Taxman 66 / 214 DTR 29/ 326 CTR 716 (Guj) (HC)

S. 127 : Power to transfer cases-Transfer of case from Mumbai to Bangalore-No reason was recorded-Order of transfer of case was set aside [S. 127(2), Art, 226]

A notice under section 127(2) was issued upon assessee to transfer his case from Mumbai to Bengaluru and an order of transfer was passed. On writ the court held that the revenue had only narrated facts but had not given any reasons why assessee's case was to be transferred to Bengaluru. Both assessee and firm in which assessee was partner were assessed in Mumbai. Court also held that pendency of a case before Addl. CMM could not be a reason for transfer

of assessee's assessment from Mumbai to Bengaluru. Accordingly the order of transfer of assessee's case passed under section 127 was to be set aside.

Divesh Prakashchand Jain v.PCIT (2022) 445 ITR 496 / 285 Taxman 206 (Bom)(HC))

S. 127 : Power to transfer cases-Assigning of reasons in notice-Search proceedings showing that assessee residing in Nagaland and had financial interests in Kerala-Transfer for purposes of co-ordinated investigation-Cogent and credible reasons assigned in notice-Notice sent to registered office in Kerala and received by Assessee-Order for transfer valid.[S. 132, ITR 127, Art, 226]

Dismissing the appeals the Court held that cogent and credible reasons were assigned in the notices issued by the authorities as required under section 127 for transfer of the cases. Such transfer of cases had to be made on administrative exigencies and for better assessment by the Revenue and the authorities were the best judge in such matters. As far as the service of the notices was concerned, the single judge had examined in detail in his order wherein he had held that notices were sent twice. It was admitted that the first notice was served at the assessees' address in Kerala. It was not the case that the notices were sent to the wrong address. The notices were sent at the registered address of the company in Kerala which had also been received by the assessees, a fact which had been reiterated over and again by the Revenue and had not been negated by the assessees. It was therefore sufficient compliance under rule 127 of the Income-tax Rules, 1962 as the notices were sent at the registered office of the assessees' company. Since no response was filed, notices were sent again. Unlike the first time, the second time it came with an endorsement of the postal authority that it was "unclaimed". A presumption could be drawn that when the first time notices were received at the same address, the second notices could not remain "unclaimed" and therefore, the plea of the assessees that the second time notices were never received by them had been rightly rejected by the single judge. The only requirement of the law was that while passing an order of transfer, the reasons must be assigned. The orders of transfer of cases need not be interfered with.

Varun Raj Pillai v. PCIT (2022) 440 ITR 47/ 211 DTR 45/ 325 CTR 45/285 Taxman 242 (Gauhati)(HC)

Rajendra Pillai.M.K. v.PCIT (2022) 2022) 440 ITR 47 / 211 DTR 45/ 325 CTR 45/285 Taxman 242 (Gauhati)(HC)

Valsala Raj Pillai (Smt) v.PCIT (2022) 2022) 440 ITR 47 / 211 DTR 45/ 325 CTR 45/285 Taxman 242 (Gauhati)(HC)

Editorial : Decision of single judge in M.K. Rajendran Pillai v. PCIT (2020) 421 ITR 274 (Gauhati) (HC) is affirmed.

S. 131 : Power-Discovery-Production of evidence-Survey-Impounding of documents-Retention beyond fifteen days without approval of higher Authority is not valid-Decision of approval must be communicated to the assessee [S. 131(3), 133A]

Allowing the petition the Court held that documents impounded under section 131 had been retained beyond the period of fifteen days. No approval had been obtained by the Department from any of the officers mentioned in section 131(3) of the Act. Therefore the respondents could not under any circumstances retain the documents of title of the assessee. Court also observed that under section 131(3) of the Income-tax Act, 1961, the documents impounded can be retained in the custody of the Income-tax Department beyond 15 days only after obtaining the approval of the Principal Chief Commissioner or other officers named in the sub-section. Apart from obtaining orders of approval from the officers to retain the documents, there is an added obligation upon the Department to communicate the orders to the assessee to enable retention of documents beyond the period specified in the said sub-section. Referred, Udaya Sounds v.PCIT (2022) 444 ITR 428 (Ker)(HC) (AY.2007-08 to 2011-12)(SJ)

Muthukoya T. v. CIT (2022)445 ITR 450 (Ker)(HC)

S. 132 : Search and seizure-Warrant of authorisation-Reason to believe-Accommodation entry-Warrant of authorisation to investigate trail of money paid-Detailed reasons recorded in satisfaction note-Bona fide opinion that assessee would not respond to summons in West Bengal-Warrant of authorisation valid [Art, 226]

The Supreme Court held that in view of the detailed reasons recorded in the satisfaction note including the investment made by the assessee for a brief period and that investment being alleged to be an accommodation entry, it could not be said to be such as not to satisfy the prerequisite conditions of section 132(1) of the Act. It was not unreasonable for the Department to apprehend that the assessee would not respond to the summons before the Assessing Officer in the State of West Bengal. It was also alleged that such summons would lead to disclosure of information collected by the Department against SS and his group. The belief drawn by the Department that the assessee would not produce or cause to be produced any books of account or other documents which would be useful or relevant to the proceedings under the Act was not based upon conjecture but on a bona fide opinion framed in the ordinary conduct of the affairs by the assessee generally. The Department wished to find the source from which the loan of Rs. 10 crores was advanced to a total stranger, unconnected with either the affairs of the assessee or any other link, to justify how a person in Ahmedabad had advanced Rs. 10 crores to a company situated at Kolkata in West Bengal for the purpose of investment in Goa. The Department may fail or succeed but that would not be a reason to interfere with the search and seizure operations at the threshold, denying an opportunity to the Department to unravel the mystery surrounding the investment made by the assessee. Clauses (b) and (c) of section 132(1) were satisfied. The Department would be at liberty to proceed against the assessee in accordance with law.(AY. 2017-18)

PDIT (Inv) v. Laljibhai Kanjibhai Mandalia (2022)446 ITR 18/ 215 DTR 417/ 327 CTR 353 / 288 Taxman 361 (SC)
Editorial : Laljibhai Kanjibhai Mandalia v. PDIT (Inv) (2019) 416 ITR 365 (Guj)(HC) order of High Court set aside.

S. 132: Search and seizure-Reasons to believe-Discretionary jurisdiction-Alternative remedy-Writ petition was dismissed. [Art. 226]

The Petitioners have preferred an Appeal before the Appellate Authority exercising their Right of Appeal against Assessment Order passed in the year 2021 for search and seizure conducted in the year 2018. Pending the said appeal, the petitioners have approached the Court under Writ Petition to exercise discretionary jurisdiction to entertain the dispute. The petitioners urged that the matter be entertained on the ground that correctness and validity of "reason to believe" may not be entertained by the Appellate authority and the petitioners filed appeal only to avoid objection with regard to limitation in the matter of challenge to order of assessment. The Court refused to exercise discretionary jurisdiction to entertain the dispute as there is not only an alternative remedy available to the petitioners under the law but that remedy has been invoked by the petitioners and the appeal is pending consideration and hence disposed off the appeal while directing the Appellate authority to decide the petitioner's appeal within a period of three months from the date of receipt of order and the aspect of "reason to believe and satisfaction" should be examined as permissible under the law.

Sanjay Singhal v. UOI (2022) 211 DTR 182/325 CTR 354 (Raj)(HC)

S. 132 : Search and seizure-Retrospective amendments made under sections 132(1), 132(1A) and 132A by insertion of Explanations preventing disclosure of reason to believe and reason to suspect in proceedings upto Tribunal are constitutionally valid. [S. 132(1), 132(IA)) 132A, Art, 14, 19, 21, 226]

Court held that Explanations added to sections 132(1), 132(1A) and 132A(1) have been given retrospective effect for purpose given in objects and reasons for such amendment. Explanations to sections 132(1), 132(1A) and 132A(1) by Finance Act of 2017 preventing disclosure of reason to believe and reason to suspect in proceedings up to Tribunal cannot be said to be offending article 14, 19 or 21 of Constitution of India and retrospectivity of amendment is permissible unless it remains otherwise unconstitutional. Accordingly the challenge to addition of Explanations to sections 132(1), 132(1A) and 132A(1) by Finance Act of 2017 was rejected and they were held to be constitutionally valid.(AY. 2014-15 to 2017-18)

SRS Mining v. UOI (2022) 328 CTR 510 / 217 DTR 321 / 141 taxmann.com 272 (Mad)(HC)

S. 132 : Search and seizure-Authorisation-Authorization for search should be of competent authority and it is on satisfaction of authority that search warrant can be issued and it can be only of Competent Officer-Where search warrant was not issued by Competent Officer, it would vitiate search-Matter remanded [Art, 226]

Court held that authorization for search should be of competent authority and it is on satisfaction of authority that search warrant can be issued and it can be only of Competent Officer.Where search warrant was not issued by Competent Officer, it would vitiate search.

Matter was remanded back to Assessing Authority for adjudication afresh. (AY. 2014-15 to 2017-18)

SRS Mining v. UOI (2022) 328 CTR 510 / 217 DTR 321 /141 taxmann.com 272 (Mad)(HC)

S. 132 : Search and seizure –Non-filer of return-Satisfaction note showed that the Assessee had assets or income which would not be disclosed to Income-Tax Authorities-Search proceedings valid [Art. 226]

Dismissing the writ petition the Court held, that a perusal of the satisfaction note for commencing search proceedings revealed that the assessee was a non-filer for the assessment year 2019-20. The note also revealed that the assessee had five rental yielding properties and that investment for construction of properties was not reflected in the books of account of the assessee. It was specifically observed that the field enquiries revealed that the assessee had collected cash against sale agreements and used the amount as unaccounted investment in the form of advance for property purchase. There were specific details relating to the amount paid. It concluded that in the light of the facts stated including the details of the project that the assessee would be in possession of money, bullion, jewellery or other valuable article or thing which represented partly or wholly the income of the assessee. The exercise of power invoking section 132 of the Income-tax Act, 1961 held to be valid. (AY.2019-20)(SJ)

Durgappa Lakkanna v. ACIT (2022)445 ITR 681 /287 Taxman 190 / 215 DTR 452/ 328 CTR 119 (Karn)(HC)

S. 132 : Search and seizure-Deputy Commissioner to issue Directions to Assessing Officer-Direction is valid-Cash seized-Voluntary sworn statement unsubstantiated by evidence by third person claiming ownership not sufficient-Addition of amount as undisclosed income of assessee-Justified. [S. 69A, 132(4A)(i),144A,153A,292C,Art,226]

Dismissing the writ petition the Court held thatthe decision under section 144A was on the subjective satisfaction of the Additional Commissioner based on objective material available and he had directed the Deputy Commissioner to complete the assessment in accordance with law. The rejection of the application was based on the report of the jurisdictional Assessing Officer which was quite damaging. Therefore, there were no reasons to interfere with the order rejecting the request of the assessee under section 144A as non-speaking or suffering from non-application of mind. The order passed under section 153A by the Deputy Commissioner was well reasoned and therefore did not warrant any interference under article 226 of the Constitution of India. The assessee was granted liberty to file a statutory appeal before the Commissioner (Appeals) under section 246A against the assessment order and an application under section 220(6) before the Deputy Commissioner.(AY. 2019-20)

Durai Murugan Kathir Anand v. Add. CIT (2022)443 ITR 423/ 213 DTR 137/ 326 CTR 394 (Mad)(HC)

S. 132: Search and seizure-Right to livelihood-Issuance of look out Circular on mere suspicion that assessee had bank accounts and investments in other countries-Cannot be basis for holding that assessee being allowed to travel abroad would be detrimental to the economic interests of India-Absence of proceedings under any penal law being initiated against assessee at relevant point of time-Indefinite continuance of look out circular on mere suspicion-Infringement of right to livelihood [Black Money (Undisclosed Foreign Income and Assets) and Imposition of tax Act, 2015 and the Prevention of Money-Laundering Act, 2002.The Indian Penal Code, 1860, Art, 21 226]

The assessee was a director in two companies which exported garments and had their registered offices in Delhi. On the basis of a warrant of authorization issued on February 5, 2019 under section 132(1) of the Income-tax Act, 1961 against a third party group a search was conducted at the assessee's residence from February 6, 2019 to February 9, 2019. During this search, besides some loose papers, a hard disk, a digital video recorder, a key to a bank locker were seized and the statements of the assessee and his wife were recorded. Thereafter, a warrant of authorisation was issued on February 12, 2019 against the assessee and his wife for a search of the bank locker from wherein jewellery was seized. On February 25, 2019, a look out circular was issued against the assessee on the grounds that he had undisclosed foreign assets and interests in foreign entities liable for penalty and prosecution under the 1961 Act, the Black Money (Undisclosed Foreign Income and Assets) and Imposition of tax Act, 2015 and the Prevention of Money-Laundering Act, 2002. In the meanwhile, on April 4, 2019 the search operation at the assessee's residence resumed under the initial warrant of authorisation issued on February 5, 2019, and continued till April 5, 2019, when after recording the assessee's statement, a final panchnama was drawn up. The assessee's requests for being provided with copies of the seized documents and the statements recorded during the search were not acceded to. On April 20, 2019, proceedings under the 1961 Act for the assessment for the financial years 2018-19 and 2019-20 were initiated against the assessee which culminated in two orders by which additional income was assessed against which appeals of the assessee were pending. The writ petition filed by the assessee challenging the search conducted in his residence and bank locker was dismissed by the court holding that the search actions conducted at the assessee's residence and locker were justified. Upon learning about the issuance of the look out circular against him, the assessee sought withdrawal thereof through representations and also submitted an affidavit, deposing therein that neither he nor any of his family members held any foreign accounts or any undisclosed assets and enclosed supporting certificates issued by the Government of Dubai. Thereafter, on August 6, 2019 the assessee filed an application before the Additional Chief Metropolitan Magistrate seeking to quash the look out circular. The Additional Chief Metropolitan Magistrate suspended the operation of the look out circular, subject to certain conditions and granted permission to the assessee to travel abroad except to the United Arab Emirates. Against this order, the respondents filed a revision petition before the Additional District Judge and the petition was allowed holding that since the assessee was neither a complainant nor an accused nor a witness in any matter pending before the Additional Chief Metropolitan Magistrate, the order suspending the look out circular was without jurisdiction. On a writ petition,allowing the petition, the Court held that merely because the office memorandum dated December 5, 2017 permitted the issuance of a look out circular, in exceptional circumstances, even when the individual was not involved in any cognizable offence under the Indian Penal Code, 1860 or any other penal law, such power was meant to be used in

exceptional circumstances and not as a matter of routine. It must therefore, be interpreted in a manner that indicated an offence of such a magnitude so as to significantly affect the economic interests of the country. Mere suspicion of a person opening bank accounts in other countries and of investing in a foreign company could not be the basis for holding that the assessee being allowed to travel abroad would be "detrimental to the economic interests of India", when it was undisputed that this suspicion had remained a suspicion for almost three years. In the light of the adverse effects that the issuance of a look out circular could have on the individual's life, the respondents' plea that the court in its jurisdiction under article 226 should not examine the legality of the look out circular and review the decision to issue the look out circular could not be accepted. The continuance of the look out circular for almost three years without any cogent reasons forthcoming from them, was impermissible, and the respondents were not entitled to continue placing fetters on the assessee's right to travel abroad in such a routine and mechanical manner without due consideration of the fact that even after almost three years there was still no sufficient evidence to charge the assessee under any penal law. The assessee earned his livelihood through export business and an integral part of such business was overseas travel. The look out circular not only curtailed his right to personal liberty but also his right to livelihood, as enshrined in article 21. Therefore, the issuance of a look out circular against the assessee without any end in sight would definitely cause irreparable and considerable damage to the business interests of the assessee. The look out circular and the extension thereof were quashed, with a direction to the assessee to intimate respondent No. 3 as and when he departed from or entered the country for the next one year.

Vikas Chaudhary v. UOI (2022) 442 ITR 119 (Delhi) (HC)

S. 132 : Search and seizure-Offences and prosecution-Disclosure of information-Police cannot ask the Income tax Authorities to hand over the documents seized by the Income tax Authorities [S. 138 (2), 293, Code of Criminal Procedure, 1973, S. 91,Art, 226]

The Search and Seizure action was conduced by the Income tax Authorities**.** The police wanted to investigate was the act of search and seizure done by the petitioners. Petitioner filed writ before the High Court and contended that the a conjoint reading of sections 132 and 138(2) of the Act, would lead to an unmistakable conclusion that once seizure proceedings are undertaken by the officials of the Department under authorisation, they are not obliged to furnish any document to any public servant in respect of such matters relating to the assessee against whom search and seizure is taken up. Section 293 of the Act mandates that no suit shall be brought in any civil court to set aside or modify any proceeding taken or order made under the Act and no prosecution, suit or other proceeding shall lie against the Government or any officer of the Government for any act done in good faith under the Act. The bar that operates under section 293 of the Act, is twofold, i. e., no proceedings shall be instituted before a civil court and no prosecution shall lie against the Government or any officer of the Government for anything done under the Act. Allowing the writ petition the Court held that the bar of divulging any information or any document taken into custody during the seizure was available under section 138(2) of the Act. What the police wanted to investigate was the act of search and seizure done by the petitioners. Therefore, it could not be contended that the first information report named nobody and the writ petition would not be maintainable. Since the first information report could not have

been registered against the petitioners in view of the specific bar under section 293 of the Act, the aftermath of such registration would be rendered without authority of law.

DGIT (Inv) v. Deputy Commissioner of Police (2022)441 ITR 89 / 285 Taxman 256 / 209 DTR 207/ 324 CTR 292 (Karn) (HC)

S. 132 : Search and seizure- Chartered accountant - Illegal search –Excess cash - Evidence can be used against the assessee - Assessee cannot allege search was to be conducted on another person and not him- Cash and balance of gold coins found in excess declared in the return to be added back.[S.69A, 69B, 143(3), 153A]

Where a search is conducted on the residential premises of the assessee, a chartered accountant by profession, and cash and gold coins are seized and addition made under Sections 69A and 69B, since the assessment order is passed under Section 143(3) and not 153A, assessee cannot complain that warrant of search is erroneous. Cash and balance gold coins in excess of that declared in return since not explained the addition is liable to be sustained. Section 143(2) notice is valid and the AO is not precluded from making a scrutiny assessment. Referred , Pooran Mal v. Director of Inspection (1974) 93 ITR 505 (SC) , Dr . Pratap Singh & Anr. v. Director of Enforcement (1985) 155 ITR 165 (SC) (AY.. 2015-2016)

Sushil Kumar Singhal v. DCIT (2022) 220 TTJ 119/ 218 DTR 297 (Jabalpur) (Trib)

S. 132(4) : Search and seizure-Statement on oath-Presumption as to correctness-Onus on Deponent to prove the contrary-Retraction of statement should be at the earliest with supporting material-Affidavit of mother in law is held to be unreliable as they were interested and self-serving testimonies-Order of Tribunal remanding the matter to the file of CIT (A) is affirmed. [S. 132, 132(4A)]

Dismissing the appeal the Court held that the Assessing Officer had not made the assessment solely on the basis of the statement recorded under section 132(4) but had also placed reliance on the material evidence seized during the course of search and at the time of assessment. After having found that the assessee had given different explanations at different stages, none of which was supported by any cogent material evidence to dislodge the presumption under section 132(4) and (4A) the Tribunal had rightly set aside the order of the first appellate authority and restored the order of the Assessing Officer. Therefore, the plea of the assessee that the assessment was made solely on the basis of the statement obtained under section 132(4) was contrary to the facts. The Tribunal had found after recording the explanations, affidavit and other documents filed by the assessee that they were not acceptable as the belated retraction of the statement was in the form of a mere assertion and there was no material evidence furnished by the assessee to retract the statement made under section 132(4) and the affidavits of the assessee's mother-in-law were unreliable as they were interested and self-serving testimonies.(AY.1995-96)

A.J. Ramesh Kumar v. Dy. CIT (2022)441 ITR 495 (Mad)(HC)

S. 132(4) : Search and seizure - Statement on oath - Tax cannot be charged on notional income — Addition was deleted [S. 153A]

The assessee admitted the sum as income from other sources in his individual return. In those circumstances, in accordance with the Central Board of Direct Taxes Circulars dated March 10, 2003 and December 18, 2014, no addition was warranted. Further, since the assessee had

admitted in his return, the Assessing Officer made the addition of Rs. 26 crores while finalizing the assessment was erroneous. The admission made by the assessee was not a conclusive evidence to make addition. Only real income was to be brought to tax. Order of CIT(A) is set aside .

Ajaz Farooqi v. Dy. CIT(2022)95 ITR 188 (Hyd) (Trib)

S. 132(4) : Search and seizure-Statement on oath-Merely on the basis of surrender when no corroborative evidence found against the assessee-Addition is not valid. [S. 132]

A search and seizure operation was carried out at the premises of the assessee, during which the assessee admitted and confirmed the addition to be made under section 132(4). The AO made addition as per the statement given by the assessee. The assessee then, vide a letter, retracted its statement made after realizing its mistake and explained the source of amount. On appeal, the CIT(A) deleted the addition made as the assessee has successfully intimated the wrong disclosure made and retracted its statement made and there was no rebuttal made by the Investigation wing against the same. The revenue challenged the order of the CIT(A) before the Hon'ble ITAT. The Hon'ble ITAT relied on the decision of the Hon'ble Delhi High Court in the case of CIT v. Sunil Aggarwal (2015) 64 taxmann.com 107 (Delhi) (HC) and held that no addition can be made merely on the basis of surrender or a statement made by the assessee which is without existence of any corroborative evidence found against the assessee. (AY. 2009-10)

DCIT v. Ambreen Projects & Infrastructure (P) Ltd. (2022) 216 TTJ 38 / 213 DTR 41 (Delhi) (Trib.)

S. 132(8): Search and seizure-Retention of the books of account and other documents-Beyond thirty days after proceedings are completed-Obligation to communicate decision to assessee-Proceedings under Act does not extend to appeal by Special Leave to Supreme Court.[S. 153A, 158BC, Art, 136, 226]

Search was conducted on December 2001, u/s 132 of the Act. Block assessment was completed u/s 158BC of the Act on December 31, 2003. High Court decoded the appeal in the year 2009. The documents seized was not released. The application filed under Right of Information Act 2005 in which the reply was given that the documents are retained due to proceedings pending before the Supreme Court. Petition was filed seeking direction to release of the title deeds and original of the seized documents. Allowing the petition the Court held that there is a bounden duty upon the Department to establish that the orders recording the reasons and grant of approval were communicated to the assessee. Court held that retention of documents beyond 30 days of the order of assessment was illegal. Section 158BC of the Act provides for the procedure for block assessment. Admittedly the order under section 158BC was issued on December 31, 2003. The proceedings under the Act expired by the disposal of the appeal by the court, by judgment dated January 8, 2010. Thereafter, no proceedings under the Act were in existence. On the contrary, the special leave petition filed under article 136 of the Constitution of India could not be regarded as a proceeding under the Act. The statutory authority lost its power to grant further authorisation to retain the documents. Therefore, even on this count, the respondents were not authorised or justified in retaining the documents of title seized by them under section 132 of the Act. The title deeds of the assessee were retained by the Department under the colour of a search and seizure for the last more than twenty-two years. This was illegal.(SJ). Referred CIT v. Oriental rubber works (1984) 145 ITR 477 (SC)

Udaya Sounds v. PCIT (2022) 444 ITR 428/ 213 DTR 13/ 326 CTR 377 /287 Taxman 251 (Ker)(HC)

S. 132(9B):Search and seizure-Provisional attachment-Repatriation of royalty or dividend-Interim order-Modification-Provisional attachment and barring repatriation of moneys abroad-Conditions modified subject to creating additional lien by way of fixed deposit in bank [S. 132, Art, 226]

On a writ petition seeking deletion of para 9(iii) of order dated April 21, 2022 in the assessee's writ petition to the effect that the assessee should not repatriate any money abroad till the next date of hearing without leave of the court (Huawei Telecommunications (India) Co. Pvt. Ltd. v. Dy. CIT (Inv) (No. 1) (2022) 448 ITR 111 (Delhi)(HC)). The court without going into the merits of the contentions raised by the respective parties and on the basis of offer made by the assessee (making it clear it was not to be considered as a precedent in any other proceeding) modified its earlier order dated April 21, 2022 and directed : (i) that in addition to the fixed deposit receipt of Rs. 100 crores which was directed to be made by the earlier order dated April 21, 2022, the assessee was to prepare another fixed deposit receipt of Rs. 100 crores which should be renewed automatically from time to time and a photocopy of the fixed deposit receipt should be filed with the Assessing Officer and the bank was also directed to ensure that the assessee or any of its officials or nominees or authorised representatives did not deal with the fixed deposit receipt in any manner. There would be a lien in favour of the Department with respect to both the fixed deposits till conclusion of the assessment proceedings and thereafter the amount would be dealt with in accordance with law and the bank was to issue a letter to the Assessing Officer acknowledging the lien in favour of the Department; (ii) the respondents not to release any refund to the assessee till the assessment proceedings were completed and thereafter the refund should be dealt with in accordance with law, (iii) the respondents to complete the assessment as expeditiously as possible and the parties would be at liberty to seek a variation of this order in the court, (iv) the assessee not to repatriate any royalty or dividend abroad and would be at liberty to approach this court, in case the need arose, and (v) the assessee to continue to file its monthly statement with the Assessing Officer of "payments received as well as made". However, the court clarified that this order would come into effect from the date the assessee deposited the additional Rs. 100 crores and upon deposit of the sum, the Assessing Officer was to withdraw the attachment orders and communicate to the parties to whom attachment orders were served.

Huawei Telecommunications (India) Co. Pvt. Ltd. v. Dy. DIT (Inv) (No. 2) (2022)448 ITR 115 (Delhi)(HC)

Editorial: Refer Huawei Telecommunications (India) Co. Pvt. Ltd. v. Dy. CIT (Inv) (No. 1) (2022) 448 ITR 111 (Delhi)(HC)

S. 132A : Powers-Requisition of books of account –Cash undisclosed seized by Excise Authorities-Deposited with Judicial Magistrate-Order giving only part of cash to Income-Tax Authorities-Not valid. [S. 131, Code of Criminal Procedure, 1973, S 451]

On March 12, 2017 while conducting a vehicle inspection at a check post, excise officials found that the second respondent was carrying cash of Rs. 50 lakhs without any proper supporting documents. The amount was seized and produced before the Magistrate. The

Income-tax authorities issued summons to the second respondent under section 131 of the Act, calling upon him to explain the source of the amount. After conducting an enquiry the Income-tax authorities found that the second respondent failed to explain the source of the cash properly and decided to initiate proceedings against him. A notice of requisition was issued but the police authorities informed the Department that the cash was in the custody of the Magistrate. The second respondent and the Department filed applications before the court for release of the cash. The application submitted by the second respondent was allowed in part and the release of 70 per cent. of the amount was ordered in favour of the second respondent upon furnishing a bank guarantee or security of immovable property for the amount. On a petition challenging the common order, the court held that for getting the amount released in favour of the second respondent, from whose custody the amounts were seized the only stipulation was that he had to convince the authorities as to the source of income and to pay the amount of taxes assessed on the income in accordance with the provisions of the Act. On the other hand, if the amount was released to the second respondent, it was likely to cause difficulties in initiating proceedings under section 132A and the further proceedings thereon. Therefore, the balance of convenience was in favour of the Department which was not taken into consideration by the Magistrate. The question of balance of convenience arose because proceedings under section 451 of the Code related to the interim custody of the asset alone and were not intended for taking a decision on the question of the title or right of the parties over the articles. Therefore, the relevant consideration was who was the proper person with whom the amount could be entrusted. The second respondent had failed to explain the source of the income to the satisfaction of the Income-tax authorities. In such circumstances, the proper course which should have been adopted by the Magistrate was to order the release of the amount to the Department so as to enable the parties to undergo the procedure contemplated under section 132A, 132B or 153A of the Act as the case may be. Though the amount was seized from the second respondent, by virtue of the provisions of the Income-tax Act, he was bound to disclose the source thereof before the authorities and to pay the tax, as per the rates applicable. Apparently no such exercise was done in this case, proceedings under section 132A or 153A were necessitated. Even if the amount was released to the Department, it was possible for the second respondent to make a claim of the amount, by following the procedure prescribed in the Act. But if the amount were released to the second respondent, it may cause difficulties in implementing the provisions of the Income-tax Act. In such circumstances, the order passed by the Magistrate had to be set aside.

UOI v. State of Kerala (2022)443 ITR 117/ 285 Taxman 677 / 215 DTR 407 (Ker)(HC)

S. 132B : Application of seized or requisitioned assets-Cash seized-Assessment quashed-Direction issued to dispose pending application expeditiously.[S.132, 132B(4)(b), 244A, Art, 226]

The High Court quashed the assessment, consequent upon which the sum was refunded without interest. On a writ petition seeking interest under section 132B(4)(b) of the Act for the period following the expiry of 120 days from the date on which the last authorization for search was executed until the date of completion of assessment and interest under section 244A until the date of the refund. High Court directed the Revenue to pass a reasoned order in accordance with law and giving liberty to the assessee if aggrieved by the order to file appropriate proceedings in accordance with law and left open the rights and contentions of all the parties.(AY.2013-14)

Yogendra Kumar Gupta v. PCIT (2022)447 ITR 775 (Delhi)(HC)

S. 132B : Application of seized or requisitioned assets-Cash seized by police-Search and seizure-Cash seized from individual-Application by the firm to release the cash seized from its employee-No evidence-Rejection of application is held to be justified [S. 132, 132(4), 132A,153A, Art, 226]

Cash was seized from Bhuraram by the police pursuant to the order dated February 9, 2011 passed by the Chief Judicial Magistrate. The seized cash was handed over to the Income-tax Department. The first statement of Bhuraram was recorded under section 132(4) of the Act, wherein he admitted that the cash amount belonged to him. Assessment proceedings in the case of B were initiated by notice under section 153A of the Act. In the course of assessment proceedings Bhuraram accepted that the seized cash belonged to him being derived from the sale of silver. The AO passed the order which was affirmed by the CIT(A). Penalty order was also passed which was affirmed by CIT(A) A writ petition was filed by the petitioner-firm claiming that Bhuraram was its employee and the seized cash belonged to it and hence it should be released to it dismissing the petition the Court held that there was no challenge to the order of penalty and the seized cash being adjusted towards it. Hence there was no irregularity or illegality in the order passed by the Assessing Officer, treating the seized cash as "unaccounted income" in the hands of Bhuraram. The firm was not entitled to the release of the cash seized.(AY. 2010-11)

Rameshkumar Shankarlal and Co. v. Dy. CIT (2022)446 ITR 343 (Guj)(HC)

S. 132B : Application of seized or requisitioned assets-Retention of seized assets-Retention of seized asset beyond time laid down-Not valid-Directed to hand over the seized asset (diamonds) to the assessee within a period of four weeks from the date of receipt of the order. [S. 132 Art, 226]

On writ for release of seized assets, the Court held that the statutory provision of section 132B of the Act is very clear. There appears to be a mandate and such mandate is mandatory and not directory. The courts should attach considerable importance to the time frame provided under sections 132A and 132B when it comes to a question of retention of books of account or of seized assets. It is not permissible for the court to read the time limit provided in the proviso to clause (i) of sub-section (1) of section 132B of the Act as being merely directory. The Court directed the respondents to hand over the seized asset (diamonds) to the assessee within a period of four weeks from the date of receipt of the order.

Ashish Jayantilal Sanghavi v. ITO(2022) 444 ITR 457 / 214 DTR 380 (Guj)(HC)

S. 132B : Application of seized or requisitioned assets-Cash stolen-Cash deposited in Court of Judicial Magistrate-Income tax proceedings pending-Cash could not be returned to assessee.[S. 131, 131(IA),132 Art, 226]

The assessee alleged that certain persons had robbed a sum of Rs. 76,40,000 which belonged to him from his employees. During the course of investigation, the police arrested the accused persons and recovered a sum of Rs.76,02,010 which was deposited in the court of the Judicial Magistrate. The assessee filed a petition for return of cash and this was allowed on condition that the assessee executed a bond for a sum of Rs. 76,00,000 and also to deposit the original title deeds for the said value, by order, dated March 3, 2021. The assessee filed a revision petition for modification of the condition. The Judicial Magistrate, dismissed the petition. On a petition against the order the Court held that the Income-tax authority initiated proceedings under section 132 of the Income-tax Act, 1961 and issued summons under section 131(1A) of the Act and in response, the assessee appeared for enquiry and his statement was recorded under section 131. In the statement, the assessee admitted that the cash belonged to him and it was his unaccounted income which has not been reported to tax. The cash of Rs. 76,02,010 deposited with the authorities/police would have to remain in the custody of the Judicial Magistrate, pending finalization of the assessment proceedings commenced by the Income-tax authority.(SJ)

Dy. DIT (Inv) v. Sampath (2022) 444 ITR 55 / 287 Taxman 150 (Mad)(HC)
Sampath v. State (2022) 444 ITR 55 / 287 Taxman 150 (Mad)(HC)

S. 132B : Application of seized or requisitioned assets-Seizure of cash-Delay in release of cash beyond period laid down in Section-Interest payable for such delay till date of payment. [S. 132B(4)(b),153A, Art, 226]

A search was conducted at the residence of the assessees on October 31, 2017 and cash was seized.The assessment was completed assessing the Nil income. The assessees applied for release of the seized cash. On November 17, 2021, respondent No. 3 released cash without payment of any statutory interest as per section 132B(4)(a) and (b) of the Act. The period of 120 days came to an end on March 2, 2018. On a writ allowing the petition the Court held that there was delay in releasing the cash amount of the assessees seized by the respondents and such payment was not made within a period of 120 days from the date on which the last authorisation for search under section 132 was executed to the date of completion of assessment under section 153A or under Chapter XIV-B of the Act, 1961. The respondents were solely responsible for the gross delay in not releasing the cash amount of the petitioners under section 132B(4)(b) of the Act and thus could not refuse the payment of compensation to the assessees for wrongfully withholding the amount from the date of assessment order till payment..

Sanjeevkumar v. UOI (2022) 444 ITR 334/ 288 Taxman 334 /214 DTR 265/ 327 CTR 84 (Bom) (HC)

S. 132B : Application of seized or requisitioned assets-Seizer of cash-Direction issued to return seized cash in accordance with assessment order [S. 132B(3), Art, 226]

Assessee filed a writ petition seeking directions to release the seized cash along with the interest.The court directed the Principal Commissioner to transfer the seized amount to the assessee's Assessing Officer since the permanent account number of the assessee was based in Ahmedabad and the assessee to apply to his Assessing Officer for refund of the seized amount in accordance with the assessment order.

Jayeshkumar and Co. v. UOI (2022)441 ITR 592 (Delhi) (HC)

S. 133A : Power of survey – Assessment -Income from undisclosed source- Additions made solely on the basis of statement recorded during survey- Additions not justified. [S. 131, 143(3)]

The Tribunal held that there was no evidence on record except the statement of the assessee recorded during survey proceedings, which had already been retracted by the assessee. The action of the Commissioner (Appeals) sustaining the addition made by the Assessing Officer was not justified. (AY. 2013-14, 2014-15)

Nitin A. Shah v. Dy. CIT (2022)97 ITR 63 (SN) (Mum) (Trib)

S. 133A :Power of survey-Statement during survey-Addition cannot be made merely on the basis of statement in the course of survey without bringing any corroborative evidence on record-CBDT Instructions F. No. 286/2/2003-It (Inv), Dated 10-3-2003 and F. No. 286/98/2013-It (Inv. Ii), Dated 18-12-2014. [S. 119]

Tribunal held that no addition can be made merely on the basis of the statement given by the assessee. The Assessing Officer had not brought any specific instance of discrepancies in the valuation of closing work-in-progress or any evidence in support of the bogus expenditure incurred by the assessee, but merely based on the statement given by the assessee, had proceeded to make the assessment and the addition. Therefore, the orders of the Assessing Officer as well as the Commissioner (Appeals) were set aside and the Assessing Officer was directed to delete. (AY.2013-14)

Bhagwan Madhukar Kale v. ACIT (2022)93 ITR 77 (SN)(Pune) (Trib)

S. 139 : Return of income-Income tax returns do not necessarily furnish an accurate guide of the real income-Particularly, when parties are engaged in a matrimonial conflict-High Court was not justified in setting aside the order of the Family Court. [Code of Criminal Procedure 1973, S. 125]

The Additional Principal Judge of the Family Court,by an order dated 11 March 2022, allowed Miscellaneous Case No 197 of 2016 instituted by the appellants under Section 125 of the Code of Criminal Procedure 1973 and directed the second respondent to pay maintenance at the rate of Rs 20,000 per month to the first appellant and Rs 15,000 each to the second and third appellants, who are daughters of the first appellant and the second respondent. High Court has set aside the order of family Court based on the income shown in the return of income. On appeal the Court held that it is well-settled that income tax returns do not necessarily furnish an accurate guide of the real income. Particularly, when parties are engaged in a matrimonial conflict, there is a tendency to underestimate income. Hence, it is for the Family Court to determine on a holistic assessment of the evidence what would be the real income of the second respondent so as to enable the appellants to live in a condition commensurate with the status to which they were accustomed during the time when they

were staying together. The two children are aged 17 and 15 years, respectively, and their needs have to be duly met. Accordingly the High Court was not justified in setting aside the order of the Family Court and directed the second respondent shall, in compliance with the interim order dated 30 September 2022, pay the entire arrears of maintenance payable to the appellants in terms of the order dated 11 March 2022 of the Additional Principal Judge, Family Court, District Gautambudh Nagar in Miscellaneous Case No 197 of 2016 on or before 31 December 2022. (CA No. 1865 of 2022 dt 31-10-2022)

Kiran Tomar & Ors v. State of Uttar Pradesh (SC) ?

S. 139 : Return of income-Revised return-Export-oriented undertaking-Declaration to be furnished to Assessing Officer in writing and before due date for filing return-Filing original return on due date with Auditor's report claiming exemption and not carrying forward any loss-Claim of exemption withdrawn in revised return filed after due date and loss claimed to be carried forward-Held to be not permissible [S. 10B(5), 10B(8), 72, 80, 139(1),139(3) 139(5)]

Assessee was a 100% export-oriented unit and engaged in the business of running a call centre and IT Enabled and Remote Processing Services. It filed return of income declaring loss and claimed exemption under section 10B. Assessee stated that no loss was being carried forward as the assessee was 100% export-oriented unit and entitled to claim an exemption under Section 10B. However, later assessee filed a revised return of income demanding carry forward of losses by not claiming exemption under section 10B. The Assessing Officer (AO) rejected the claim of carrying forward of loss as the revised return of income can be filed under Section 139(5) only to remove the omission and mistake and/or correct the arithmetical error. It cannot be filed for altogether a new claim. High court allowed the claim of the assessee. On appeal the Supreme Court held that claim of exemption withdrawn in revised return filed after due date and loss claimed to be carried forward is held to be not permissible. The assessee was not entitled to the benefit under section 10B(8) of the Act on account of its failure to comply with the twin conditions as provided under section 10B(8) of the Act. Court also held that Chapter III and Chapter VI-A of the Act operate in different realms and the principles of Chapter III, which deals with "incomes which do not form a part of total income", cannot be equated with the mechanism provided for deductions in Chapter VI-A, which deals with "deductions to be made in computing total income". Therefore, rulings on the interpretation of Chapter VI-A will not be applicable while considering the claim under section 10B(8) of the Act.(AY. 2001-02)

PCIT v.Wipro Ltd. (2022)446 ITR 1 / 216 DTR 1/ 327 CTR 381 / 288 Taxman 491/ 140 taxmann.com 223 (SC)

Editorial : Decision of the Karnataka High Court in PCIT v. Wipro Ltd [2021] 17 ITR-OL 253 (Karn) reversed.
Editorial: Application for listing Review Petition in open Court was rejected, Wipro Ltd v. PCIT(2022) 289 Taxman 621 (SC)

S. 139 : Return of income-Condonation of delay-litigation between promotors and investors-Beyond control of assessee-PCIT and Additional CIT recommending condonation of delay-Rejection of application by CBDT was set aside by High Court was affirmed. [S. 119(1), 119(2)(b), Art, 136, 226]

The assessee made an application before the CBDT to condone the delay as the return could not be filed due to prolonged litigation between the promotors and investors. CBDT rejected the application. On writ the single judge directed the CBDT to condone the delay and application for condonation of delay was allowed. contended that the delay in filing Application of the assessee to condone the delay in filing the return due to Where CBDT rejected assessee's application for condonation of delay in filing return without appreciating reasons given by assessee for such delay and without considering documents produced by assessee, in view of fact that such delay was beyond control of assessee said order was to be set aside and application for condonation of delay was to be allowed. On appeal the division bench affirmed the order of single judge. Circular No. 9 of 2015 dated June 9, 2015 (2015) 374 ITR (St.) 25) On appeal by the Revenue, SLP of revenue was dismissed. (AY 2014-15)

CBDT v. Vasudeva Adigas Fast Food (P.) Ltd. (2022) 289 Taxman 148 / 220 DTR 463 /(2023) 450 ITRR 4 (SC)
Editorial: Order of High Court, affirmed, CBDT v. Vasudeva Adigas Fast Food (P.) Ltd (2021) 437 ITR 67/ 282 Taxman 48(Karn)(HC)

S. 139 : Return of income-Difficulties in uploading Audit report-Revenue was directed to attend the technical glitches in portal at the earliest [Art, 226]

Writ petition was filed on account of technical glitches in the Portal which the Chartered Accountants are facing and difficult to up load the audit report. The High Court directed the Revenueto attend the technical glitches in portal at the earliest.
Chartered Accountants Association v. UOI (2022) 286 Taxman 116 (Guj)(HC)

S. 139 : Return of income-Revised return-Demerger-Delay in filing revised return-Demerger-Protective assessment-Sanction from Company law Board-Rejection of revised return is not valid [S 139(5), Art, 226]

On the sanction of the scheme being effective from April 1, 2017 the erstwhile DIL's assets, liabilities, incomes, etc. were deemed to be that of the resulting company, the assessee. However, the time for filing the revised return for the assessment year 2018-19 had lapsed and there was no mechanism to file it online. The assessee raised a grievance on the income tax portal on June 26, 2020 through the e-Nivaran facility. Thereafter, it physically filed the

revised return along with the letter dated July 28, 2020 explaining the cause of revision. The Deputy Commissioner rejected the revised return of income filed by the assessee and passed an assessment order on protective basis making an addition. On a writ allowing the petition the Court held that once there was no response to the grievance raised on the Income-tax portal, the assessee had physically filed the revised return on July 28, 2020. The Department therefore ought to have considered the physical filing of the revised return. The assessment order was quashed.(AY.2018-19)

Deep Industries Ltd. v. Dy. CIT (2022)441 ITR 307 / 212 DTR 307/ 326 CTR 107 (Guj) (HC)

S. 139 : Return of income-Delay in submitting ITR-V did not make e-filed return for assessment year 2008-09 invalid for denying carry forward of losses claimed in such return [S. 80]

Assessee e-filed its return of income on 30-9-2008 and filed ITR-V Form on 31-3-2009. As per Notification No. 210/2007, assessee was required to furnish ITR-V within fifteen days of e-filing of return and issue of provisional receipt.Assessing Officer denied carry forward of losses under section 80 on Ground that return of income was not filed within prescribed due date. Court held thatdelay in submitting ITR-V did not make e-filed return for assessment year 2008-09 invalid for denying carry forward of losses claimed in such return, when the time limit for furnishing of from ITR-V was extended for assessment years 2009-10 to 2019-20 vide various CBDT Circulars (AY. 2008-09)

PCIT v. Electronics and Controls Power Systems (P.) Ltd. (2022 285 Taxman 92 / 212 DTR 233/ 326 CTR 233 (Karn) (HC)

S. 139 : Return of income-Return of loss-Non-Resident company-Return of loss filed beyond due date-Not eligible to carry forward losses [S. 139(1)]

Held, dismissing the appeal the assessee had filed the return of income for the assessment year 2013-14 on November 22, 2013 whereas according to Explanation 2(a) to section 139, the last date for filing the return of income was September 30, 2013, that the assessee had filed form 3CEB certified by the chartered accountant on November 30, 2013 and showing the value of international transactions or specified domestic transactions as nil, that the return of income had been filed on November 22, 2013 meaning thereby that form 3CEB had been obtained after the filing of return of income, that in form 3CEB there was no mention of the amount received on capital account nor the reason for not reporting the receipt amount on capital account in form 3CEB. Considering the totality of these facts, the Commissioner (Appeals) was fully justified in holding that since the assessee has filed its return of income beyond the stipulated due of September 30, 2013, the assessee was not eligible to claim the carry forward of the losses.(AY.2013-14)

Thai Glico Co. Ltd. v. Dy. CIT (2022) 93 ITR 38 (SN)(Delhi) (Trib)

S. 139A : Permanent account number –Surrendering permanent account number card on obtaining new card-Notice issued under old card-Court directed the Commissioner to decide which permanent account number was to be used by the assessee for future transactions and Income-tax returns.[S. 148, 148A(b) Art, 226]

By mistake the assessee submitted an application for the issuance of a new permanent account number card, and accordingly, a new permanent account number card was issued. Later on, he realised his mistake and submitted an application on January 18, 2017 before the ITO for surrendering new permanent account number card. Upon receiving the said application, the respondents cancelled the new number. According to the assessee, he never used this number in filing any of the Income-tax returns or in any transaction with the Government Department. The assessee was served with a show-cause notice by the respondents on March 23, 2022 under section 148A(b) of the Income-tax Act, 1961 alleging that he had made transactions using the second number without disclosing them to the Income-tax Department. The assessee submitted a reply. During the pendency of these proceedings, the respondents cancelled the old permanent account number card and activated the new one. The assessee filed writ before the court seeking directions to the respondents to cancel the new permanent account number card and to activate the old one so that he may file Income-tax returns for this financial year, Court held that the assessee had to file Income-tax returns for this financial year or previous financial years for which he had to have a permanent account number. The old permanent account number had been deactivated and the new permanent account number which he got cancelled had been now activated for the proceedings of section 148 of the Act. If he used this permanent account number he might face complications in future. This complex issue had to be examined by the Commissioner considering the practical problem being faced by the assessee and also the complications which might arise in future while filing Income-tax returns and quoting the wrong permanent account number. The Commissioner should also decide which permanent account number was to be used by the assessee for future transactions and Income-tax returns.

Ramchandra Haryani v. UOI (2022) 218 DTR 258 /328 CTR 1085 (2023) 450 ITR 250 (MP)(HC)

S. 139A : Permanent account number-Duty of assessee to intimate change of address to Income-Tax Authorities [S. 139A(5)(d), 144, 147, 148, Art, 226]

Dismissing the petition the Court held that Section 139A(5)(d) makes it clear that it is the responsibility of the assessee to intimate the Assessing Officer with respect to any change in his address or in the name and nature of his business on the basis of which the permanent account number was allotted.Exercise of jurisdiction by the High Court under article 226 of the Constitution of India is discretionary and not obligatory without being exhaustive. When a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation. The Income-tax Act, 1961 provides complete machinery for the assessment or reassessment of tax, imposition of penalty and for obtaining relief with respect to an improper order. One ought to not abandon this machinery and invoke the jurisdiction of the High Court under article 226 of the Constitution when adequate remedy is available to him by way of appeal..(AY.2016-17)

S. K. Srivastava v. CBDT(2022)445 ITR 390/ 327 CTR 397 (Delhi)(HC)

S. 140 : Return by whom to be signed-Company-Appeal filed was verified by General Manager of assessee-company who did not hold a valid Power of Attorney-, Appeal was dismissed in limine [S. 140(c), 253(6), Rule 45(3) 47(1), ITAT R. 11.]

The appeal filed before the Tribunal was signed by the General Manger (CT & GST) BESCOM. The Tribunal requested the assessee to remove the defects however the defects was not removed. Tribunal held that Section 253(6) of the Act states that the appeal to the appellate tribunal need to be filed in the prescribed form and it is also to be verified in the prescribed manner. Meanwhile Rule 47(1) of the I.T. Rules also clarifies that "appeal shall be signed by a person specified in sub-rule (3) of Rule 45. Rule 45(3) states that the form of appeal referred to sub-rule (1) to be verified by a person who is authorized to verified by the person who is authorised to verify the return of income under section 139(1) of the Act, as applicable to the assessee. According to the provisions of section 140(*c*) of the Act states that in case of a company, where the appeal is to be verified by the managing director of the company or for unavoidable reason, such managing director is not able to verify the return or where there is no managing director; by any director thereof. Further, there was an amendment w.e.f. 1.4.2020 to the provisions of section 140(*c*) of the Act where it was stated that the return could be filed by any other person as may be prescribed for this purpose. Even if we apply this amendment retrospectively also, it is not clear whether the General Manager, (CT&GST), BESCOM was holding a valid Power of Attorney from the assessee company to verify the appeal of the assessee even as provided u/s. 140(*c*) of the Act. Even this information is not available on the record. Accordingly the appeal was dismissed in limine. (AY. 2008-09)

Bangalore Electricity Supply Co. Ltd v.DCIT(2022) 195 ITD 188 (Bang)(Trib)

S. 140A : Self assessment-Failure to deposit admitted self-assessment tax –Financial difficulty-Levy of penalty is not valid [S. 140A(3), 221(1)]

Dismissing the appeal of the Revenue the tribunal held that amended section 140A(3) with effect from 1-4-1989 does not envisage any penalty for non-payment of self-assessment tax, hence, no penalty as per post-amended sub-section (3) to section 140A read with section 221(1) could have been imposed on assessee for its failure to deposit its admitted self-assessment tax liability. Tribunal also held that where acute financial stringency which was further supplemented by absence of any other source of income had triggered failure on part of assessee to discharge its admitted self-assessment tax liability at time of filing its return of income, and for a period thereafter, no penalty under section 221(1) read with section 140A(3) could have been imposed.(AY. 2011-12, 2012-13)

DCIT v. Karanja Terminal & Logistic (P.) Ltd. (2022) 193 ITD 385 / 215 TTJ 41/ 215 DTR 289 (Mum) (Trib.)

S.142(2A): Inquiry before assessment-Special audit-Voluminous material seized during Search-Bogus claims-If two or three queries out of forty five queries unwarranted, entire order giving directions could not be treated as nullity-Directions neither arbitrary, illegal nor beyond scope of provision [Rule 14A, Form 6B]

On writ petitions against the directions issued on April 22, 2021 for special Audit was affirmed considering bogus claims and voluminous material was seized during the course of search and post-search proceedings conducted at various premises of the D group Court held that the Assessing Officer had the jurisdiction to give directions for a special audit under section 142(2A), and that the directions were neither arbitrary, illegal nor beyond the scope of the provision. On petitions for special leave to appeal dismissing the special leave petitions Court held that that there was no reason to interfere with the judgment and order passed by the High Court, which was a well-reasoned and well-considered judgment.

Dishman Carbogen Amcis Ltd. v. ACIT (2022)443 ITR 227/ 212 DTR 127/ 325 CTR 707/ 285 Taxman 192 (SC)
Dishman Infrastructure Ltd v. ACIT (2022)443 ITR 227/ 212 DTR 127/ 325 CTR 707/ 285 Taxman 192 (SC)
Editorial: Decision in Dishman Infrastructure Ltd v. ACIT (2021) 437 ITR 487(Guj)(HC) affirmed.

S.142(2A): Inquiry before assessment-Special audit-Audit report is not binding on revenue-Reasons for discarding it have to be recorded by Assessing Authority after proper discussion and same could not have been discarded summarily-Matter remanded [Art, 226]

Court held that though special audit report issued by CA under section 142(2A) to (2D) is not binding on revenue, however, reasons for discarding it have to be recorded by Assessing Authority after proper discussion and same could not have been discarded summarily. Matter remanded.(AY. 2014-15 to 2017-18)

SRS Mining v. UOI (2022) 328 CTR 510 / 217 DTR 141 /taxmann.com 272 (Mad)(HC)

S.142(2A): Inquiry before assessment-Special audit–Pre-decisional hearing-Principle of natural justice-No opportunity of hearing was given before directing to get its accounts audited-order was quashed.[Art, 226]

Assessee challenged order passed by Assessing Officer directing it to get its accounts audited through a Special Auditor under section 142(2A) on ground that no opportunity of hearing was given to it before passing impugned order. Revenue submitted that principles of natural justice did not apply to section 142(2A) of the Act. Court held that since no opportunity of hearing was given to assessee before directing assessee to get its accounts audited, orders were vitiated by failure to observe principles of natural justice. (AY. 2002-03)
Narendra Polyplast v. Pranab Kumar Das. ITO(2022) 288 Taxman 567 (Bom)(HC)

S.142(2A): Inquiry before assessment-Special audit–Pre-decisional hearing-Principle of natural justice-No opportunity of hearing was given before directing to get its accounts audited-order was quashed.[Art, 226]

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Narendra Polyplast v. Pranab Kumar Das. ITO(2022) 288 Taxman 567 (Bom)(HC)

S.142(2A): Inquiry before assessment-Special audit-Order was passed after giving adequate opportunity and considering the reply of the Assessee-Order is affirmed [Art, 226]

Dismissing the petition the Court held that order was passed after giving adequate opportunity and considering the reply of the Assessee. Order is affirmed and writ petition is dismissed. (AY. 2018-2019)

Rajiv Gandhi Proudyogiki Vishwa Vidyalaya (2022) 285 Taxman 208 (MP)(HC)

S. 142(2A) : Inquiry before assessment– Special audit– Not pointed out any complexity - Reference to special audit, therefore is an invalid reference, contrary to law-Consequently, the assessment order passed in the extended period is barred by limitation and hence void [S. 143(2), 153]
Held that theAO has not pointed out any complexity in the accounts of the assessee, the only inference that can be drawn on the facts of the case is that the reference to special audit was made only to buy further time for completing the assessment which was initiated at the fag end of the statutory period for completion of assessment and, therefore, reference for special audit was not valid; assessment order passed in the extended period is barred by limitation and hence void. (AY. 2014 -15)
Haryana State Industrial & Infrastructure Development Corpn. Ltd. v. ACIT (2022) 220 TTJ 217 (Chd)(Trib)

S. 142(2A): Inquiry before assessment-Special audit-Reference to Special Audit-Without opportunity of being heard-Illegal-No extension of time for assessment-Additional ground-Assessment order is barred by limitation. [S. 143(3), 153, 254(1)]

The assessee has raised additional ground before the Tribunal the appointment of special auditor u/s 142(2A) deserves to be declared illegal since the said appointment is without examination of books of accounts and also without providing reasonable opportunity of being

heard to the appellant accordingly the assessment deserves to be quashed having been passed beyond the limitation period prescribed u/s 153 since the appointment of Special auditor u/s 142(2A) is illegal and therefore, the period for assessment could not have been extended. The Tribunal admitted the additional ground and held that where the appointment of a special auditor under 142(2A) of the Act was without examination of books of accounts and also without providing reasonable opportunity of being heard to the appellant, the said reference was held to be illegal. Consequently, there was no extension of time period for assessment. Hence the assessment was held to be made beyond the period of limitation. (ITA 1325/CHD/2010 dt. 30-12-2022) (AY. 2006-07)

Rajiv Kumar v. ACIT (2023) 146 taxmann.com 115(Chd)(Trib) www.itatonline.org

S. 142A : Estimate of value of assets by Valuation Officer - Reference to Department Valuation Officer — Unexplained expenditure — Reference for valuation of agricultural land purchased -Not valid - Commissioner (Appeals) - No power to change section under which Assessing Officer has assessed item of income. [S. 69, 69C, 250, 251]

Held that under section 142A a reference can be made to ascertain the value of any investment referred to in section 69 or section 69B or the value of any bullion, jewellery or any other valuable article referred to in section 69A or section 69B of the Act. There is conspicuous exclusion of section 69C . The reference under section 142A in the assessee's case had not been made for ascertaining the correct market value of the investment in property but for the purpose of ascertaining the expenditure which the assessee had made on the purchases. The reference to the Departmental Valuation Officer under section 142A for the purpose of section 69C was not valid. Held that under section 250 of the Act, the Commissioner (Appeals) is empowered to make further inquiry as he thinks fit or direct the Assessing Officer to make further inquiry and report to him. Under section 251(1)(a) , in appeal against an order of assessment, he may confirm, reduce, enhance or annul the assessment, but there is no such power to change the provision of law qua the item of which assessment was made. Therefore, in the absence of such power, the Commissioner (Appeals) could not have treated the addition made under section 69C as an addition made under section 69B . There was no power conferred upon the Commissioner (Appeals) to assess a particular item under a different provision of the Act than the Assessing Officer had done without giving specific notice to the assessee regarding such action The addition made under section 69C on the basis of the report of the Departmental Valuation Officer by the Assessing Officer was to be deleted.(AY.2006-07)

Toffee Agricultural Farms Pvt. Ltd. v. ITO (2022) 95 ITR 74(SN)/ 217 TTJ 850 / 213 DTR 337 / 141 taxmann.com 429 (SMC) (Delhi)(Trib)

S. 142A : Estimate of value of assets by Valuation Officer -Fair market value — Property having high rental value in market and huge commercial viability — Circle rate not indicative of market value—Comparable sale instance better indication of realisable value.

That the Assessing Officer in exercise of powers under section 142A had made reference to the Departmental Valuation Officer, who had submitted his detailed report to the Assessing Officer. The act of the assessee in denying the inspection of properties to the Departmental Valuation Officer or participating during the asset valuation proceedings was not acceptable. (AY. 2011-12)

Young Indian v. ACIT (E) (2022)95 ITR 33 (SN)/218 TTJ 1 (Delhi)(Trib)

S. 143(1) : Assessment-Intimation-Prima facie adjustment-Additional tax-Depreciation-Reduction of loss-Leviable only where attempt to evade tax proved-Department was to be set aside [S. 143(1)(a), 143(IA)

Assessing Officer levied additional tax under section 143(1A) of the Income-tax Act, 1961 on the amount of loss reduced in the intimation issued under section 143(1)(a) of the Act and the High Court held that if the adjustment made by the Assessing Officer resulted in reduction of loss on account of disallowance of part or full depreciation claimed by the assessee, it would justify levy of additional tax under section 143(1A), on appeal allowing the appeal the Court held that the additional tax levied on the assessee could not be lawfully recovered and the demand raised by the Department was set aside.(AY.1991-92)

Steel and Industrial Forgings Ltd. v. Dy. CIT (2022)449 ITR 164 / 220 DTR 482 (SC)
Editorial: Decision in Steel and Industrial Forgings Ltd. v. Dy. CIT (2009) 318 ITR 18 (Ker)(HC), reversed.

S. 143(1) : Assessment-Intimation-Insurance premium-Premature surrender of life insurance policy-Though TDS under section 194DA was contemplated on gross amount paid under a life insurance policy, but amount of income which could be added by means of adjustment under section 143(1)(a)(vi) would be such sum received as reduced by amount of premium paid. [S. 10(10D), 143(1)(a),143(a)(vi), 194DA Form No. 26AS]

Assessee received a sum of Rs. 12 lakhs towards premature surrender of life insurance policy and premium paid was Rs. 8 lakhs. Assessing Officer held that receipt of insurance amount which was reflected in Form No. 26AS was not included in total income. He passed assessment order under section 143 and made addition with respect to said amount.Held that commencement of policy was on 30-08-2011 with amount of premium at Rs. 8.00 lakhs for a sum assured at Rs. 16.00 lakhs and premium exceeded 20 per cent of the sum assured.Since sum received falls in exception clause (c) of section 10(10D) and income would become chargeable to tax, however, as per Circular no. 07/2003, dated 5-9-2003 even though deduction of tax at source under section 194DA is contemplated on gross amount paid under a life insurance policy, but income would be such sum received as reduced by amount of premium paid. Section 143(1) provided for making adjustment by way of 'addition of income appearing in Form No. 26AS' and not sum so appearing in Form, amount of income which could be added by means of adjustment under section 143(1)(a)(vi) would be sum received as reduced by amount of premium. (AY. 2017-18)
Swati Dyaneshwar Husukale v. DCIT (2022) 197 ITD 823 / 220 TTJ 665/ 220 DTR 82 (SMC) (Nag) (Trib.)

S. 143(1) : Assessment-Intimation-Adjustment cannot be made unless an intimation is given of such adjustment in writing or in electronic mode-Employee's contribution-Adjustment is invalid in law. [S. 36(1)(va),43B, 143(1)(a)]

Held that a return can be processed under section 143(1) by making adjustments on six types of adjustments only, however, the first proviso to section 143(1)(a) makes it very clear that no such adjustment shall be made unless an intimation is given to assessee of such adjustment either in writing or in electronic mode. The adjustment made in respect of employees' contribution is held to be bad in law. (AY.2018-19)
Arham Pumps. v. DCIT (2022) 195 ITD 679 (Ahd) (Trib.)

S. 143(1) : Assessment-Intimation-Any sum received from employees –Adjustment made without giving an intimation is held to be bad in law [S. 36(1)(va), 43B, 143(1(a)]

Held that the adjustment made by the CPC without following the first proviso to section 143(1(a) the order is bad in law. Tribunal held that the NFAC has not looked in to the fundamental principle of " audi alterm partem" which has been provided to the assessee as per Ist proviso to section 143(1)(a) but has proceeded with the case on merits and also confirmed the addition made by the CPC. It held that the NFAC erred in conducting the faceless appeal proceedings in a mechanical manner without application of mind. The Tribunal quashed the intimation issued by the CPC. (TS-355-ITAT-2022 (Ahd) (AY. 2018-19)(Dt. 27-4 2022)

Arham Pumps v.DCIT (2022) 195 ITD 679 (Ahd)(Trib)

S. 143(1) : Assessment – Intimation -Adjustment made by CPC - disallowance of expenditure – Assessing the Trust as an AOP – Adjustment was directed to be deleted – Application u/s 154 of the Act was allowed .[S. 2(31), 12A , 57, 154, 167B]

The assessee is a registered society named as Shri Sanatan Dharam Mandir Sabha . It runs a Sanatan Dharam Mandir at Ambica Vihar, Delhi and thus a religious society. It has neither applied nor received any registration u/s 12A of the Income Tax Act, 1961 . For the Assessment Year, the assessee filed its income tax return in ITR-7 on 26.07.2021 showing taxable income at Rs.2,18,060/-, after reducing the application of income of Rs.4,85,564/- from the gross receipt of Rs.7,03,624/-. The income was shown under the head "Income from Other Sources". The CPC Bangalore processed the return u/s 143(1) and disallowed the expenses of Rs.4,85,564/- claimed in the return. Further the CPC, Bangalore denied the benefit of threshold limit and charged the income tax at maximum marginal rate on the gross receipt. The assessee filed an application u/s 154 before the AO, however, rejected the application of the assessee by holding that since the status of the assessee is AOP (Trust) on which there is no threshold limit, therefore, the calculation of the tax rate at maximum marginal rate is correct. However, the AO did not elaborate regarding the disallowance of entire expenditure claimed by the assessee i.e. 143(1) by the CPC, Bangalore. On appeal the CIT(A) held that the rate applicable of the individual and denied the other deductions . On appeal the Tribunal held that adjustment made by the CPC, Bangalore, and confirmed by the ld. CIT(A) is not warranted being contrary to provisions of section 143(1) of the Act. Accordingly, the order of the Ld. CIT(A) is set-aside and the AO is directed to allow the claim of expenditure from the gross receipt. Appeals of the assessee are allowed. (AY. 2013 -14 , 2014 -15 , 2015 -16 , 2016 -17)

Sanatan Dharam Mandir Sabha v. ITO (SMC) (SN) (2022) 95 ITR 64 (Delhi)(Trib)

S. 143(1) : Assessment – Intimation -credit for deduction of tax at source —Assessing Officer should give an opportunity to file tax credit certificates and consider claim of assessee . [Form No, 26AS]

Held, that the assessee and the Department having agreed that the assessee could file the details of tax deducted at source before Assessing Officer and the Assessing Officer would accordingly allow the claim, the Assessing Officer was to give opportunity to the assessee to file tax credit certificates and accordingly, consider the claim of assessee afresh.(AY.2019-20)

Mayajaal Entertainment Ltd. v. Dy. CIT (2022)95 ITR 86 (SN)(Chennai) (Trib)

S. 143(1) : Assessment – Intimation - Prima facie adjustment Employees contribution to EPF/ESI- Adjustment is held to be valid [S. 36(1)(va), 43B, 143(1))(a))]

Held that clause (iv) of section 143(1)(a) talks of two different limbs, namely, 'disallowance of expenditure' and 'increase in income' by means of indication in audit report, both limbs are independent of each other . Adjustment under section 143(1)(a) by means of disallowance made for late deposit of employees' share to relevant funds beyond date prescribed under respective Acts, was a case of 'disallowance of expenditure' and not 'increase of income' and thus same was valid . Followed Checkmate Services (P) Ltd v .CIT (2022) 448 ITR 518 (SC) (AY. 2017 -18 to 2020- 21)

Cemetile Industries. v. ITO (2022) 220 DTR 265 / 220 TTJ 801/ (2023) 198 ITD 322 (Pune) (Trib.)

Late Dhannang Shankar Ganesh v. Dy.CIT (2022) 220 DTR 313 / 220 TTJ 813 (Chennai)(Trib)

S. 143(2) : Assessment-Notice –Jurisdiction-Transferred from Assessing Officer, Circle VIII to Assessing Officer, Circle 8(1)-Notice under section 143(2) was issued by ACIT, who had no jurisdiction over assessee-Assessment order was set aside [S.124(3)(a), 143(3), 144, Art, 226]

Assessee filed its return of income and same was selected for scrutiny. A notice under section 143(2) was issued by ACIT, who had no jurisdiction over assessee.Assessing Officer, Circle 8(1), in pursuance to said notice issued by ACIT, passed an ex parte assessment order. The assessment order was challenged by assessee by filing writ before the High Court. Allowing the petition the Court held that since Assessing Officer, who had jurisdiction over assessee, passed impugned assessment order without issuing notice under section 143(2) within time limit prescribed, order was set aside.

S.K. Industries v. ACIT (2022) 141 taxmann.com 568(Delhi)(HC)

Editorial : SLP of Revenue dismissed since no good ground and reason to condone delay was found, ACIT v. S.K. Industries (2022) 288 Taxman 651 (SC)

S. 143(2) : Assessment-Notice-Transfer from ITO, Ward-3 to ITO, Ward-4-Order passed by ITO, Ward-4 without issuing notice under section 143(2) of the Act-Order is null and void [S.120, 143(3)]

The case of assessee was transferred from jurisdiction of ITO, Ward-3 to ITO, Ward-4. ITO, Ward-4 who had jurisdiction over assessee during relevant assessment year framed scrutiny assessment under section 143(3). Tribunal held that the order was passed only in pursuance to notice under section 143(2) which was issued by ITO, Ward-3 who had no jurisdiction

over assessee at relevant time, since no notice was issued under section 143(2) by ITO, Ward-4, assessment order passed by him would be without any jurisdiction and would be null and void. (AY. 2007-08)
PCIT v. Nopany & Sons (2022) 286 Taxman 388 (Cal)(HC)

S. 143(2) : Assessment – Notice –Notice issued by Assessing Officer returned unserved cannot be treated as service of notice. [S. 292BB , General Clauses Act , 1897 , S. 27]
Held, that the undisputed fact that the envelope containing the notice under section 143(2) was not served on the assessee was admitted by the Assessing Officer and the Commissioner (Appeals). The service of notice under section 143(2) within the prescribed time limit was a sine qua non for completion of assessment under section 143(3) .Order was quashed . (AY. 2012-13)
AMBA Construction Co. v. CIT (2022)100 ITR 295 (Trib) (Delhi)(Trib)

S. 143(2) : Assessment – Notice – Notice served after due date- barred by limitation-Notice not justified- Quashed. [(Prior To Amendment By Fa, 2016 W. E. F. 1-6-2016)]
The Tribunal held that the notice was issued by the Assessing Officer beyond the period of limitation prescribed in the statute. The assessment order was quashed.(AY. 2013 -14)
Uttam Enterprises Pvt. Ltd. v. ACIT (2022)97 ITR 398/ 218 TTJ 9 (UO) (Delhi) (Trib)

S. 143(2) : Assessment – Notice – Validity — Notice issued by Assessing Officer by E-Mail and affixture on same date — Notice served through E-mail taken as delivered on same day — Notice not defective. [S. 143(3)]

The Tribunal held that the notice was issued by the Assessing Officer on September 30, 2014 and affixture was done on the same date. The notice was also served through e-mail. The service of the notice through e-mail was taken as delivered on the same day. The notice itself was not defective. The Assessing Officer correctly completed the service of notice under section 143(2) both by affixture and by e-mail. (AY. 2012-13)
Gunwant Kaur v. CIT (2022) 96 ITR 21 (SN)(Amritsar) (Trib)

S. 143(2) : Assessment-Notice-Non-issuance of notice u/s 143(2) is a jurisdictional defect and cannot be cured by section 292BB-Reassessment is held to be bad in law. [S. 147, 148, 292BB]

Held that non-issuance of notice u/s 143(2) is a jurisdictional defect and cannot be cured by section 292BB. Reassessment is held to be bad in law. Relied on CIT v. Laxman Das Khandelwal (SC) (AY.2009-10,2010-11, 2011-12)
Sapankumar U Jain v. ITO (2022) 94 ITR 216(Mum)(Trib)

S. 143(2) : Assessment-Notice-Failure to issue notice-Reassessment is bad in law-Monetary limit-Information from Sales tax department falls with in the exception-Appeal is maintainable [S. 147, 148, 268A]

Held that notice had been issued beyond the statutory period of four years as notice under section 143(2) of the Act was issued beyond the prescribed time limit in the Act. Quashing of reassessment is held to be valid. Tribunal also held that the Department's appeals fell under clause 10(e) of the CBDT Circular No. 3 of 2018, dated July 11, 2018 (2008) 405 ITR 29 (St)

as amended by Circular No. 17 of 2019, dated August 8, 2019(2019) 416 ITR 106 (St) and should not be dismissed on account of low tax effect. (AY.2010-11, 2011-12)

ITO v. Manjil Dineshkumar Shah (2022)94 ITR 68 (SN)(Ahd) (Trib)

S. 143(2) : Assessment-Notice Issue of notice prior to filing return of income-Order invalid [S. 147, 148]

Held, that the issuance of notice under section 143(2) of the Act prior to the filing of return of income was invalid and in the absence of valid notice, the assessment order was rendered invalid.(AY.2011-12, 2012-13, 2013-14)

Krypton Diamonds Pvt. Ltd. v. ACIT (2022)93 ITR 27 (Surat) (Trib)

S.143(3):Assessment-Amalgamation of companies-Corporate death of entity upon amalgamation cannot invalidates Assessment order-No intimation regarding amalgamation nor revised return filed though time available after amalgamation-Notice issued-Conduct of assessee from date of search and before all forums consistently holding itself out as assessee-Assessment valid-Matter restored to Tribunal to hear appeal and cross-objections on merits. [S. 2(1A), 142(2A), 143(2), 153A, 170; Companies Act, 1956,S.394,481]

A return was filed on May 28, 2010, describing the assessee as MRPL. In the return, the permanent account number disclosed was that of MRPL and its date of incorporation was the date of incorporation of MRPL. In the "Business Reorganization" column it mentioned "not applicable" in the amalgamation section. A special audit was directed after notice under section 142(2A) to which objections were filed in respect of portions relatable to MRPL. The Assessing Officer issued the assessment order showing the assessee as "MRPL, represented by MIPL". An appeal was preferred to the Commissioner (Appeals) showing the appellant's name as "MRPL (represented by MIPL after amalgamation)". The Commissioner (Appeals) set aside some amounts brought to tax by the Assessing Officer. The Department appealed against this order before the Tribunal; simultaneously, the assessee filed a cross-objection to the Tribunal in which an additional ground was urged that the assessment order was a nullity because it was in the name of MRPL which was not in existence. The Department's appeal was dismissed and the assessee's cross-objection was allowed on a single point, i. e., that MRPL was not in existence when the assessment order was made, as it had amalgamated with MIPL. The Department appealed to the High Court. The High Court dismissed the appeal. On further appeal allowing the appeal, that for AY. 2006-07, there was no intimation by the assessee regarding amalgamation of the company. The original return of income was not revised even though the assessment proceedings were pending. The last date for filing the revised returns was March 31, 2008, after the amalgamation order. A return was filed, pursuant to notice, which suppressed the fact of amalgamation; on the contrary, the return was of MRPL and contained its permanent account number. Appeals were filed to the Commissioner (Appeals) and a cross-objection to the Tribunal by MRPL "represented by MIPL". After fully participating in the proceedings which were specifically in respect of the

business of the erstwhile MRPL for the year ending March 31, 2006, for the first time (in the appeal preferred by the Revenue), an additional ground was urged that the assessment order was a nullity because MRPL was not in existence. At no point in time, the earliest being at the time of search, and subsequently, on receipt of notice, was it plainly stated that MRPL was not in existence, and its business assets and liabilities had been taken over by MIPL. Furthermore, the assessment order painstakingly attributed specific amounts surrendered by MRPL, and after considering the special auditor's report, brought specific amounts to tax, in the search assessment order. That order was expressed to be of MRPL (as the assessee) represented by the transferee, MIPL. The mere choice of the Assessing Officer in issuing a separate order in respect of MRPL, in these circumstances, could not nullify it. The conduct of the assessee, commencing from the date the search took place, and before all forums, reflected that it consistently held itself out as the assessee. Even the affidavit before the court was on behalf of the director of MRPL. The approach and order of the Assessing Officer was valid. The order of the High Court was not sustainable and was to be set aside. Since the appeal of the Department against the order of the Commissioner (Appeals) was not heard on the merits, the matter was restored to the Tribunal, to hear the parties on the merits of the appeal as well as the cross-objections, on issues other than the nullity of the assessment order, on the merits. Court held that whether the corporate death of an entity upon amalgamation per se invalidates an assessment order ordinarily cannot be determined on a bare application of section 481 of the Companies Act, 1956 (and its equivalent in the 2013 Act), but would depend on the terms of the amalgamation and the facts of each case.(AY. 2006-07)

PCIT v. Mahagun Realtors (P) Ltd. (2022)443 ITR 194/ 212 DTR 201/ 326 CTR 1 /287 Taxman 566 (SC)

S.143(3):Assessment-Amalgamation of companies-Corporate death of entity upon amalgamation cannot invalidates Assessment order-No intimation regarding amalgamation nor revised return filed though time available after amalgamation-Notice issued-Conduct of assessee from date of search and before all forums consistently holding itself out as assessee-Assessment valid-Matter restored to Tribunal to hear appeal and cross-objections on merits. [S. 2(1A), 142(2A), 143(2), 153A, 170; Companies Act, 1956,S.394,481]

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PCIT v. Mahagun Realtors (P) Ltd. (2022)443 ITR 194/ 212 DTR 201/ 326 CTR 1 (SC)

S.143(3):Assessment-Bogus purchases –Hawala dealers-Sales tax Department-Gift materials-Additions made to the total income on account of bogus purchases –Stock register and quantity details filed-Deletion Tribunal-Order of Tribunal is affirmed [S.69C, 260A]

The assesse is engaged in the business of manufacturing and selling Indian made Foreign liquor. The Assessing Officer disallowed the alleged bogus purchases on the ground that the Director has made statement before the Assistant Commissioner of Sales Tax (I-27),Investigation Branch Mumbai admitting that they have issued invoices /bills without delivery of goods as hawala bills. The notice issued to these parties u/s 133(6)) of the Act remained unserved they are not available / traceable. Officer by an order sheet requested the assessee to produce the said parties before officer for verification but the assessee did not produce them.The appeal was partly allowed because the addition by the Assessing Officer on account of alleged bogus purchases was confirmed by the CIT(A). On appeal Tribunal deleted the addition. Relied on order in MPIL Steel Structures Ltd v.DCIT (ITA No. 6602 /Mum/ 2014 (AY. 2011-2012 On appeal by Revenue the High Court held that the quantity details and stock register stating various gift item purchased from various parties, delivery challans and also confirmation from few wine shops about description of goods and quantity of goods distributed.Accordingly affirmed the order of the Tribunal. (ITA No.1404 of 2017, 1418 of 2017 dt 22-11-2021)(AY. 2009-10)

PCIT v. Allied Blenders and Distillers Pvt. Ltd (Bom)(HC)(UR)

S. 143(3): Assessment-Principle of natural justice-Guidelines for passing assessment order-Cash credits-2 G scam-Procedure for assessment laid down in Manual of office procedure issued by Directorate of Income-Tax must be followed-Assessing Officer must furnish to assessee all copies of documents referred to in order of assessment-Direction of the Tribunal must be followed-Prayer for one more opportunity to respondents was rejected-The assessment order was annulled. [S. 68, 254(1) Art, 226]

The assessment order was passed my making addition under section 68 of the Income-tax Act,for alleged illegal gratification relatable to and the amount received in connection with the 2G scam. Court held that the procedures have been set out in the Manual of Office Procedure Volume II issued by the Directorate of Income-tax. Paragraph 3.2.7 of the Manual requires officers to furnish copies of all documents that are referred to in the assessment order and relied upon by the officer to the assessee.Court also held that the direction of the Tribunal was to complete the assessment de novo, implying clearly, application of mind anew to the facts and circumstances of the case. There was abject lack of application of mind to any of the issues raised by the assessee. This bordered on contempt. The order of assessment was not valid. The only question that survived was whether an opportunity should be given once again to the Department to go through the process of assessment and reframe the assessment. An assessment cannot be set aside merely for the asking and simply as a measure of affording multiple innings to the respondents. There were simply no mitigating circumstances that would persuade one to remand the matter yet again. Instead, the blatant disregard of all cannons of law, fairness as well as of the order of the Tribunal, made it clear that this was not a matter where the respondent must be afforded one more innings. The assessment stood annulled. Order cannot be improved upon by way of a counter affidavit or by way of statement relied, Mohinder Singh Gil v. Chief Election Commissioner (1978) AIR 1978 SC 851. Court also observed that, unless authorities adher not only just to the latter but also to the spirit of orders passed by the superior authorities discipline would be impossible to achieve, relied UOI v. Kamalakshi Finance Corporation Ltd (1992) Suppl (1) SCC 443 (AY.2009-10 to 2011-12) (SJ)

Kalaignar TV Pvt. Ltd. v. CIT (2022)449 ITR 492/(2023) 290 Taxman 334 (Mad)(HC)

S. 143(3): Assessment-Search and seizure-Opportunity of hearing-Alternative remedy-Writ petition was dismissed [S. 127, 153A, Art, 226]

Writ petition was filed against the assessment order. Dismissing the petition the Court held that assessee having failed to make out a case of denial of reasonable opportunity of being heard, no interference was warranted. (AY.2013-14 to 2018-19, & 2019-20)

Ravi Shankar Singh v. Dy. CIT (2022) 288 Taxman 559/141 taxmann.com 17 / 216 DTR 268 /327 CTR 710 (MP)(HC)

S. 143(3): Assessment-Principle of natural justice-Scrutiny Assessment-Issuance of show-cause notice prior to finalisation of order of assessment is mandatory-Orders were treated as show cause notice-Directed to file replies within a period of six weeks. [S. 142(1), 143(2),143(3), Art, 226]

On a writ petition against finalisation of assessments for the AYs 2016-17 and 2017-18, allowing the petition, the Court held that the orders of assessment for the AYs 2016-17 and 2017-18 should be treated as show-cause notices and the assessee was to file replies and after hearing the assessee, either virtually or physically, orders of assessment should be passed. Though two preassessment notices had been issued leading to some exchange of communications between the parties no show-cause notice crystallizing the issues dealt with in the assessment orders had been put to the assessee for rebuttal prior to completion of proceedings. Instruction No. 20 of 2015 dated December 29, 2015 ([2016] 380 ITR (St.) 36), Instruction No. 3 of 2018 dated August 20, 2018, relating to the AY 2016-17 and the "e-proceeding" facility available during the assessment 2018-19 and Circular No. 27 of 2019 dated September 26, 2019 ([2019] 417 ITR (St.) 68 reiterate the importance of adherence to the principles of natural justice in the finalisation of proceedings (AY. 2016-17, 2017-18) (SJ)

eShakti.Com Pvt. Ltd. v. ACIT (2022) 444 ITR 257 / 213 DTR 327 / 327 CTR 48 (Mad)(HC)

S. 143(3): Assessment-Alternative remedy-Dismissal of earlier writ on ground of alternative remedy of appeal-Dismissal of revision petition-Not entertained [S. 246A, 264 (7), Art, 226]

Dismissing the petition the Court observed that the petitioner with the sole intention of avoiding the payment of tax determined in the assessment order deliberately chosen the forum of revision under section 264 with the intention to make out a case before the court again under article 226 of the Constitution of India indirectly to get interference in the assessment order which the Commissioner in exercise of his power under section 264 had refused and the court had also refused in the first round of litigation. On the facts considering the conduct of the assessee the petition was dismissed. (AY. 2018-19)(SJ)

Unisource Hydro Carbon Services Pvt. Ltd.. v. UOI (2022) 444 ITR 227/ 212 DTR 151 / 326 DTR 566 (Cal)(HC)
Editorial : In Unisource Hydro Carbon Services Pvt. Ltd. v. UOI(2022) 444 ITR 229 (Cal)(HC) order of single judge reversed.

S. 143(3): Assessment-Order passed without giving an opportunity of personal hearing-Order is not valid-Assessment order was set aside and directed the Assessing Officer provide personal hearing through video conferencing. [S. 143(2), Art, 226]

Allowing the petition the Court held that though the assessee had not specifically requested for a personal hearing, the fact remained that where the books of account had to be examined for arriving at a proper conclusion, a personal hearing is mandatory. The order of assessment was not valid. Referred clarification dated July 11, 2016 bearing reference F. No. 225/162/2016/ITA.II. Instruction No. 3 of 2018 bearing reference No. 225/249/2018-ITA.II dated August 20, 2019. Assessment order was set aside. Directed the Assessing Officer provide personal hearing through video conferencing. Assessment order already issued should be treated as show cause notice. (AY. 2018-19)(SJ))

Vamsha Retail Ventures P. Ltd. v. ACIT (2022) 444 ITR 346 /327 CTR 52 / 287 Taxman 471 / 213 DTR 331 (Mad)(HC)

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S. 143(3): Assessment-Ex parte order-Failure to attend due to ill health-Order set aside [S. 142(1), Art. 226]

Assessment order was passed for failure to avail of the opportunity to be heard. On writ the Court held that the appellant could not attend due to ill health and thus, the matter can be remanded back to the assessing authority for reconsideration with one condition that on the date to be fixed by this Court the assessee shall appear and file her defence and statements with counter to the satisfaction of the respondent revenue.. Matter was remanded. The Court also gave various directions while disposing off the writ petition which needs to be followed by Assessing Officer and Assessee both. (AY. 2016-17)(SJ)

Bernard Veilankanni Shema Priya (Mrs.) v. Assessing Officer (2022)443 ITR 289 (Mad)(HC)

S. 143(3): Assessment-Principles of natural justice-The right of a man to have a fair opportunity of hearing is fundamental to any civilised legal system-Effective opportunity to be heard not given-Order of assessment set aside [Art, 226]

The high-pitched assessment was made without providing an effective opportunity of hearing. On writ the Court held that the right of a man to have a fair opportunity is a fundamental right in any legal system.When the tax department of the Country is in a transition phase, with conventional and traditional notices being replaced by e- notices or intimations in the web portal, the technological inadequacies and incompetence of the litigants cannot be brushed aside lightly, especially when the prejudice to the litigant is enormous. As the tax department and the assessees are both passing through the transition phase and shifting to electronic modes, a rigid consideration and application of rules of natural justice do not augur well for the system. The rules of natural justice are flexible to adapt to situations and circumstances to advance the cause of justice. The rules of natural justice must depend on the circumstances of each case, the set of facts that surround each situation, the nature of the inquiry, the rules that govern the procedure and even the subject matter dealt with, apart from the prejudice that could be caused to either side. On facts an effective opportunity of hearing could not be availed of by the assessee in its full sense and therefore there had been a violation of the principles of natural justice while issuing the order of assessment. The Court held that the order of assessment was not valid Order set aside the same and granted fresh opportunity to the assessee to reply to the notices issued and also to consider same in a time bound manner so no prejudice is caused to the department.. Followed UOI v. Jesus Sales Corporation (1996) 4 SCC 69. (AY. 2017-18, 2018-19) (SJ)

Bhima Jewels v. PCIT (2022)443 ITR 403/ 209 DTR 322/ 324 CTR 435 (Ker)(HC)

S. 143(3): Assessment--Draft assessment order-Amalgamation-Non existent entity-Observation made by single judge is vacated-Assessee relegated to statutory remedy of appeal to be decided on merits,. [S. 139A(5) 144C, Art, 226]

Dismissing the appeal against single judge in Mando Automotive India Pvt. Ltd. v Dy. CIT (NO. 1) (2022)442 ITR 433 (Mad) (HC) held that in response to the notice under section 142(1) the assessee had twice brought to the knowledge of the Assessing Officer about the amalgamation, the shareholding pattern and certain other details and therefore, the assessee was entitled to contend that the assessment could not be done on a non-existing person. This issue was a mixed question of law and fact. Therefore, the issue as to whether the assessment could have been completed by passing a draft assessment order on a "non-existing entity" was a matter to be decided before the authorities under the Act and not before a court. While dismissing the writ petition filed by the assessee the court had made certain observations which might affect the assessee when it availed of the remedies under the Act and such findings rendered by the court were vacated in their entirety and the assessee was granted liberty to avail of the alternative remedy before whichever authority provided under the provisions of the Act.(AY.2013-14)

Mando Automotive India Pvt. Ltd. v Dy.CIT (NO. 2) (2022)442 ITR 443 / 214 DTR 121/ 327 CTR 644(Mad) (HC)

Editorial : Mando Automotive India Pvt. Ltd. v Dy. CIT (NO. 1) (2022)442 ITR 433/ 214 DTR 127 / 327 CTR 651/ 138 taxmann.com 340 (Mad) (HC) order of single judge is affirmed with deleting observations on merits.

S. 143(3): Assessment-Alternative remedy-Adequate opportunities of hearing given were not availed-Writ is not maintainable when there is an efficacious statutory remedy of appeal before CIT(A). [S.143(2), 246A, Art, 226]

Dismissing the petition the Court held, that the assessee had been given adequate and ample opportunities of hearing but the assessee had not availed of them. In the light of the alternative remedy of appeal before the Commissioner (Appeals) under section 246A being not only efficacious and effective but also a tenable option owing to 25 per cent. of the demand under section 156 having been already deposited, the assessee was relegated to the alternative remedy. (SJ) (AY.2017-18)

Amjathkhan Sharmila Siraj (Mrs) v. ITO (2022)441 ITR 1 / 210 DTR 1/325 CTR 330 / 145 taxmann.com 227 (Mad) (HC)
Arunachalam Nadar Muthuraj v. ITO (2022) 441 ITR 107/ 285 Taxman 415 (Mad) (HC)

S. 143(3) : Assessment-Order passed without considering the reply filed by the assessee-Violation of principle of natural justice-Order was set aside [S.80P(2)(d), Art, 226]

The Assessing Officer without considering assessee's objections, finalised assessment order disallowing claim under section 80P(2)(d) of the Act. On writ allowing the petition the Court held that failure to consider response offered by assessee was a negation of rights of natural justice, therefore, order of assessment passed without reference to response submitted by assessee being in violation of principal of natural justice was to be set aside and revenue was to be directed to consider and pass fresh assessment orders. (AY. 2018-19)

Anavilasam Service Co-operative Bank Ltd. v. ACIT (2022) 284 Taxman 666 (Ker.)(HC)

S. 143(3): Assessment-Appeal-Commissioner (Appeals) –When appeal is pending writ against the assessment order is held to be not maintainable [S. 156, 246A, 251, Art, 226]

The Assessing Officer passed the assessment order without considering the submissions. The Assessee filed an appeal and also writ petition. Court held that writ petition challenging same order which was pending consideration before Appellate Authority was not maintainable and was liable to be dismissed. Followed Satya Pal Anand v. State of M.P. (2016) 10 SCC 767
Agrawal Global Infratech (P.) Ltd. v. UOI (2022) 284 Taxman 380 (Chhattisgarh)(HC)

S. 143(3): Assessment-Survey-Unexplained investment-Excess stock-Lock-down restrictions owing Covid-19-Unable to produce documents in support of its claim within time granted-Order was set aside [S. 69, 133A, 142(1), 143 (2), Art, 226]
Allowing the petition, that on the facts and in view of the situation that during the relevant period there had been lock down restrictions due to the second wave of the covid-19 pandemic and subsequent to the extension given up to April 27, 2021, no further extension had been given to the assessee, the order passed under section 143(3) was to be set aside and the matter remanded to the Department for reconsideration after giving a final opportunity of two weeks time to the assessee to produce the necessary documents to substantiate the claim that the additional stock found during the survey did not belong to the assessee, but to its sister concern. On failure by the assessee to do so to the satisfaction of the Department, the Department could proceed further and pass orders afresh and in this context, no further grievance could be espoused by the assessee on the ground that opportunity had not been given.(AY.2011-12)

PSR Bankers v. ACIT (2022) 440 ITR 228 (Mad)(HC)

S. 143(3) : Assessment –Show cause notice granting time of only four days-Assessment order passed in violation of principles of natural justice to be set aside. [Art, 226]

Allowing the writ petition, the Court held that where the show cause notice issued by the Assessing Officer only granted a period of four days for filing the details and the assessee requested for an accommodation of fifteen days. As the limitation for passing the assessment order was not expiring for another two months, and yet, the Assessing Officer passed the assessment order without granting an adjournment and without even referring to the request for adjournment, the order was to be set aside. (AY. 2018-19)

Deepak Garg v. UOI (2022) 440 ITR 575 (Delhi) (HC)

S. 143(3) : Assessment – Validity- Assessment pursuant to revision order of CIT- Additions made with respect to issues out of the subject matter of revision order not justified – Deletion of addition. By CIT(A) is justified . [S. 263].

Held, that the Assessing Officer was not empowered to expand the scope of consequential proceedings under section 143(3) read with section 263 of the Income-tax Act, 1961 by making assessment in respect of issues which were not subject matter of revisional order under section 263. The action of the Commissioner (Appeals) reversing the additions made by the Assessing Officer wholly unconnected to the directions given in the revisional order was thus in consonance with law delineated in judicial precedents and did not warrant any interference. (AY. 2014-15)

Dy. CIT v. Brahma City Pvt. Ltd. (2022)98 ITR 451 (Delhi) (Trib)

S. 143(3): Assessment – Amalgamation of companies- Order in the name of a non-existent company - Assessment framed in name of amalgamated company- Held to be invalid.

The assessee had intimated the Assessing Officer about the amalgamation and also requested him to transfer all the assessment records to the Assessing Officer of the amalgamated company. Therefore, the Tribunal held that the assessment order in the name of a non-existent company suffered from the substantive illegality and was invalid in the eyes of law. (AY. 2014-15)

ITO v. IFGL Refractories Ltd. (2022)98 ITR 209 (Kol) (Trib)

S. 143(3): Assessment - Protective Assessment — No statutory authorisation but recognised by Courts -Addition in hands of firm not attaining finality -Protective assessment sustainable.

Dismissing the appeal the Tribunal held that the firm challenged the order of the Assessing Officer and the matter was pending before the Commissioner (Appeals). Thus, in this way, the addition made by the Assessing Officer in the hands of the firm had not attained finality. In cases where the Income-tax authorities are not clear as to whom income belongs, the only option left with the authorities in order to safeguard the Revenue is to make two assessments for the same income on two different persons, one on substantive basis and other on protective basis. For these reasons courts have recognised the concept of protective assessment, although there is no such provision in the Act to make protective assessment. On the facts and circumstances of the case, no loss was going to be suffered by the assessee, in upholding the protective addition made by the Assessing Officer in the hands of the assessee.(AY. 2011-12)

Bhagwati Devi Meel (Smt.) v. ITO (2022) 98 ITR 36 (SN)(Jaipur) (Trib)

S. 143(3) : Assessment – Failure to produce vouchers – Disallowance of 20% of expenses was confirmed – Other grounds are rejected – Order of CIT(A) is affirmed with minor modification. [S. 250]

Tribunal rejected the grounds on not considering the submission made by the CIT(A) on the ground that the assessee has not complied with the three notices issued earlier and non - consideration of submission has no impact on the issues under consideration . All other grounds are rejected and as regards failure to produce vouchers disallowance of 20% of expenses was confirmed . (AY. 2015 -16)

Jan Prakash Printing & Publishing v. ITO (2022) 220 DTR 161 / 220 TTJ 854 (Jabalpur)(Trib.)

S. 143(3) : Assessment – Unaccounted receipts – On money – Land owner – No joint venture – Sale of land – No evidence was found – Dumb documents –Excel sheet found in third party premises - Order of Settlement Commission – Addition was deleted. [S. 132(4), 132(4A), 153C, 245C, 245D(4), 292C, Rule , 9, Companies Act 1956 , S. 209]

Dismissing the appeal of the Revenue the Tribunal held that during the course of search of third party premises , nothing incriminating material was found against the assessee . The Assessing officer has made addition merely based on the statement of facts filed by DDDPL before the Income Tax Settlement Commission and no efforts whatsoever were made independently by the Assessing Officer to come to a conclusion that they have paid ant "On Money" nor the Assessing Officer took any statement from the ultimate buyers of the plot of land that they have paid any "On money' and nor any evidence has been filed to show that the assessee was a party to the transactions of sale of plot of land between the DDDPL and the final buyers of the plot of land . Order of CIT(A) , deleting the addition was affirmed . Relied on V.C. Shukla v. CBI (1998) 3 SCC 410, Common Cause (A Registered Society) v. UOI (2017) 77 taxmann.com 245 (SC) (AY. 2010 -11 , 2011-12)

ACIT v. Goyal Developers (2022) 219 TTJ 1041 (Indore)(Trib)

S. 143(3) : Assessment - Jurisdiction –The ITO, Ward 1(2), Jabalpur was not having jurisdiction over the case of the assessee notice under s. 143(2) issued by him was invalid - Assessment under s. 143(3) framed by the jurisdictional AO at Bilaspur on the basis of the notice under S 143(2) issued by him after the limitation period cannot be sustained- Order was quashed .[S. 2(7A), 120, 127 , 143(2)]

Assessee had all along filed his returns with the ITO, Ward 2(2), Bilaspur in the preceding years as well as in the year under consideration. He received a notice under S. 143(2) dt. 1st Aug., 2012 from the ITO, Ward 1(2), Jabalpur. On realizing that the jurisdiction over the case of the assessee was not vested with him, the ITO at Jabalpur transferred assessee's case records to the ITO at Bilaspur. Notice under S. 143(2) there after issued by ITO, Bilaspur on 7th Jan., 2014 was barred by limitation. -AO as defined in s. 2(74) takes within its sweep only those Accordingly, the assessment framed by the ITO, at Bilaspur vide his order passed under S 143(3) dt. 12th March, 2014 was quashed. (AY.2011-12)

Hari Singh Chandal (Dr.) v. ITO (2022) 220 TTJ 839 / (2023) 221 DTR 338 (Raipur) (Trib)

S. 143(3) : Assessment – Mismatch –Books of account not rejected - Books of account and Form No 26AS – Advance receipt of amount - The receipts/sales taken by the

assessee as per books override the annual statement (26AS) - Addition made by AO was deleted. [S. 4 , 44AB, 145 , Form No 26AS]

Held that mere receipt of money by way of advance does not automatically become the income of the assessee per se without doing the work for which the money was received . Income-tax is tax as real income unless the position stands altered by a deeming fiction in the Act Books override the annual statement (26AS). Addition was deleted. Tribunal also held that AO having neither rejected the books of accounts nor indicated any material to question the correctness and bona fides of the book results declared by the assessee, estimation of income by applying net profit rate of 8 per cent to contract receipts is not sustainable, low profit is neither the circumstance nor the reason to justify the estimation at some higher percentage. Followed CIT v. Paradise Holidays (2010) 325 ITR 13 (Delhi)(HC) (AY. 2012 -13)

Sanjay Agrawal v. Dy. CIT (2022) 219 TTJ 239 / 218 DTR 324 (Raipur)(Trib)

S. 143(3) : Assessment – Search -On money – Trading data found in the cloud – Settlement commission accepting the application in the assessment of declarant – No evidence of on money received by the assessee – Deletion of addition is held to be justified. [S. 68, 69 , 115BBE, 132(4A), 153C, 245D(4), 292C]

Held that the Developer MBDL Pvt. Ltd. having owned up all the 'N Trading Co. cloud data found during the course of the search at their office premises as belonging to it and offered the on-money receipt from various real estate projects by way of additional income before the Settlement Commission which has been accepted by the latter in its order. Addition made on account of on-money receipts in the hands of the assessee (landowner) on the basis of same cloud data cannot be sustained in the absence of any evidence to indicate that the assessee has received any share in the on-money received by MBDL Pvt Ltd . Appeal of the Revenue was dismissed . (AY.2013 -14, 2014 -15, 2015 -16)

Dy. CIT v. Late Smt. Puspa Goyal Through Legal Munna Lal Goyal (2022) 217 TTJ 65 (UO) (Jaipur)(Trib.)

S. 143(3) :Assessment - Method of accounting – Income from undisclosed sources – Alleged bogus purchases and sales-Accommodation entries – Goods purchased was exported – Deletion of addition by the CIT(A) is affirmed . [S. 131, 145(3)]

Dismissing the appeal of the Revenue the Tribunal held that the Assessee has substantiated the purchases of Rice by placing on record invoices of the suppliers, bank statements of the assessee showing the payments made, confirmations of brokers, delivery of the goods at the CCL a Government body, and loading of the goods into railway wagons for which bills were issued by the railways that were cleared by the assessee, the AQ was not justified in treating the impugned purchases as bogus without disbelieving the authenticity of the documents, since the sales of aforesaid goods shown by the assessee is evidenced by Form 'H' substantiating exports and domestic sales to recognized export houses and the gate register of CCI's container depot the authenticity of sales of goods in question is proved therefore, the same could not be treated as unexplained cash credits. Order of CIT(A) was affirmed . (AY. 2014 -15)

ACIT v. Sanjay Kumar Kochar (2022) 219 TTJ 925 / 218 DTR 270 / 100 ITR 195 (Raipur)(Trib)

S. 143(3) : Assessment - Scientific Research expenditure — Weighted deduction — Raising claim by letter in course of assessment proceedings —Matter remanded to

Assessing Officer to examine claim in accordance with law after examining evidence furnished in support of claim .[S. 35(2AB)]

Held, allowing the appeal the Tribunal held that the assessee had made a claim by filing the letter in the course of assessment proceedings . The Assessing Officer was directed to examine claim in accordance with law after examining evidence furnished in support of claim . (AY.2015-16)

Anand Nvh Production Pvt. Ltd v .JCIT (2022)99 ITR 17 (SN)(Delhi) (Trib)

S. 143(3) : Assessment - Amalgamation — Intimation to Assessing Officer during course of assessment proceedings and prior to passing of draft assessment order and final assessment order Direction of Dispute Resolution Panel to pass final order in name of assessee — Assessing Officer passing assessment order in name of erstwhile company — Assessment order null and void. [S. 144C(13)

Allowing the appeal the Tribunal held that the Assessing Officer had passed the assessment order in the name of BRL, even though sufficient intimation had been made to the Assessing Officer during the course of assessment proceedings about the merger of BRL with the assessee. The Assessing Officer was diligently informed about the amalgamation during the course of assessment proceedings and prior to the passing of the draft assessment order and final assessment order. Hence, the assessment order in the name of amalgamated company was null and void.(AY.2017-18)

Biocon Biologics Ltd. v. Dy. CIT (2022)99 ITR 7 (SN)(Bang)(Trib)

S. 143(3): Assessment - Limited scrutiny to examine "High Ratio Of Refund To Tax Deducted At Source" —Not entitled to examine expenditure which had no relationship with tax deducted at source – All additions are illegal – Capital or revenue – Legal expenses – Revenue in nature – Business promotion expenses allowable as deduction . [S. 37 (1)]

Held that when the tax authorities scrutinised the claim of high ratio of refund to tax deducted at source, the substantial question involved should be the examination of those heads of receipts wherein credit for tax deducted at source was sought to be adjusted against the income and refund claim. The tax liability of the assessee was Rs. 59,48,694 and advance tax of Rs. 56,00,000 was paid and there was tax deducted at source of Rs. 26,06,769. If scrutiny for high ratio of refund to tax deducted at source were held to entitle the Assessing Officer to examine even expenditure which had no relationship with the tax deducted at source, that would give arbitrary powers to the Assessing Officer to do complete scrutiny of all expenses in a limited scrutiny and thus circumvent the provisions which required mandatory approval of the competent authority to convert limited scrutiny to complete scrutiny. No reason was cited as to how the tax deducted at source credit shown in the return had impact on the expenditure and would affect the refund of the assessee. The very exercise of jurisdiction to examine the disputed expenses under limited scrutiny on the ground of "high ratio of refund to tax deducted at source", was vitiated and that made all the additions illegal.Tribunal also held that expenses paid to legal and professionals for opinion about legal and tax consequences of prospective investment is allowable as revenue expenditure Expenses for promotion of business of Online gaming by providing gaming gears to Gamers and promoting E-Sports in India is allowable as business expenditure . (AY.2015-16)

Instel Services Pvt. Ltd. v. Dy. CIT (2022)99 ITR 24 (SN) (Delhi) (Trib)

S. 143(3): Assessment - Accommodation entry business – Commission on deposits – Estimate of income at 0.5 Per Cent is held to be proper .

Held, dismissing the appeal of the Revenue the Tribunal held that there was no infirmity in the findings of the Commissioner (Appeals) that the assessee was an entry provider and was involved in accommodation entry business and had been rightly taxed at 0.5 per cent. on the commission income on the deposits in the bank account which included the sale consideration of Rs. 3,28,32,402 and deletion of the addition on account of business income.(AY.2010-11)

Dy.CIT v. Nexus Software Ltd (2022) 99 ITR 45 (SN) (Ahd)(Trib)

S. 143(3): Assessment - Business income – Capital gains - 90 Per Cent. of profits from transactions disclosed and taxed as business income in hands of other person — Principle of uniformity — Assessee's share of 10 Per Cent also be taxed as business income [S. 28(i), 45]

Dismissing the appeal of the Revenue the Tribunal held that the assessee had only allowed his name to be used in the transactions and was personally involved in the making of these deals. The income earned by the assessee was not an appreciation of his investment, but consideration for being part of the arrangement to earn profit from transactions involving lands. The income earned was towards his personal involvement and for time contributed. There was no transfer of capital asset by the assessee. The amounts were invested by SDP and 90 per cent. of the profits made on the two transactions was remitted to his account. SDP had disclosed the profits made from these two transactions in his return of income under the head "Business income" which had been accepted under section 143(3) . Principles of uniformity demanded that the balance 10 per cent. also to be taxed as "Business income" in the hands of the assessee.(AY.2011-12)

Dy. CIT v. Virendrabhai Devjibhai Patel (2022)99 ITR 29 (SN)(Surat) (Trib)

S. 143(3): Assessment - Co-Operative Society- Provision for additional interest paid on compulsory thrift deposit and reinvestment deposit of compulsory thrift deposit —Not allowable as deduction – Additional ground – Deduction under section 80P- Matter remanded to the Assessing Officer .[S.80P, 254(1)]

Held that during the course of assessment proceedings for the assessment years 2010-11, 2013-14 and 2014-15, the assessee was asked to explain why additional interest paid on compulsory thrift deposit and reinvestment deposit of compulsory thrift deposit should not be treated as dividend payout. The assessee, in response, had filed revised returns of income offering to tax the provision made on additional interest on compulsory thrift deposits and provision towards additional interest on reinvestment deposit of compulsory thrift deposits. Order of CIT(A) is affirmed . Held that the the assessee can always make a new claim, not made in return of income, before the appellate authorities. Since the assessee had all along been granted deduction under section 80P and a ground in this regard was also taken before the Commissioner (Appeals), in the interest of justice, the Assessing Officer was directed to consider the claim to deduction under section 80P of the Act. (AY.2012-13)

LIC Employees Co-Operative Credit Society v .ITO (2022)99 ITR 3 (SN) (Hyd) (Trib)

S. 143(3) Assessment — Undisclosed commission Income — Protective addition — Substantive addition confirmed in hands of B group – Protective addition is not unsustainable .

Held, that the substantive addition having been confirmed in the hands of the B group would ipso facto make the protective addition in the hands of the assessee unsustainable. Merely because the rate of commission determined by the Tribunal at lower rate was not acceptable to the Revenue that would not be ground for protracted litigation in the case of assessee in whose case the additions were made only on protective basis. (AY.2008-09, 2009-10)

Basant Dharmichand Jain v. Dy. CIT (2022) 99 ITR 16 (Mum)(Trib)

S. 143(3): Assessment - Search and seizure — Capital work in progress – Loose slips found during search – Neither claiming expenditure nor payment – Addition is deleted – Loan taken in personal capacity -Addition is not valid – Jewellery – Matter remanded. [S. 37(1), 132]

Held, that the loose slips found during the course of search related to certain purchases made by the assessee in respect of his real estate projects. Where the liability towards purchases had been shown under the head "capital work-in-progress" corresponding to the document found during the course of search and continued to remain outstanding (and payment not being made during the year) in the books of account at the year-end, it was a case where the assessee had neither claimed the expenditure nor made any payment during the year under consideration. Therefore, the question of disallowance or making an addition thereon did not arise and is deleted. Held that the assessee explained the source of loan taken in personal capacity and shown as capital contribution Addition was deleted . As regards the value of jewellery found during the course of search was well within the limits as provided in Central Board of Direct Taxes Instruction No. 1916, dated May 11, 1994 as corroborated by the copy of panchnamas and Departmental valuer report. The panchnamas and the Departmental valuer's report were part of the assessment records and could be verified to examine veracity of the contention raised by the assessee. The issue was set aside to the file of the Assessing Officer to examine the contention in accordance with law after providing reasonable opportunity to the assessee (AY.2018-19)

Meet Pal Singh v .ACIT (2022) 99 ITR 496 (Chd) (Trib)

S. 143(3): Assessment - Limited scrutiny — Assessing Officer cannot go beyond grounds on which selected — Business expenditure — Medical Doctor — Payment of commission for referring patients — Not permissible — Expense not allowable [S. 37(1)]

Held, allowing the appeal, that although the claim of the assessee that the Assessing Officer had made addition by completely misunderstanding and misinterpreting the facts of the case was unwarranted and it had taken contradictory stands before the Assessing Officer and the Commissioner (Appeals), and even otherwise the payment of commission by the assessee for referring patients to him was not legal or in accordance with public policy, and hence not an allowable expense, the case of the assessee was selected for limited scrutiny and the addition in hand did not emanate from the grounds on which the case of the assessee was selected for limited scrutiny. The authorities were not allowed to travel beyond the issues involved in limited scrutiny cases, except in exceptional circumstances and by completing relevant

formalities before proceeding to other issues, which in the instant case had not been adhered to. Hence, the expense was liable to be allowed.(AY.2015-16)

Sudhir Chadha v. ACIT (2022)100 ITR 56 (SN)(Delhi) (Trib)

S. 143(3): Assessment – Jurisdcition – Notice – Transfer of case – Failure to produce the Circular giving power to transfer of case - Appeal required to be restored to file of Asstt. Commissioner, Rourkela Circle, Rourkela for de novo assessment.[S. 116, 127 , 143(2), 144]

Asstt. Commissioner, Rourkela Circle, Rourkela having jurisdiction on assessee in respect of assessment year issued on assessee a notice under section 143(2). Subsequently Jt. Commissioner, Rourkela Range, Rourkela for purpose of completion of assessment only had transferred case of assessee to ITO, Ward-2, Rourkela . ITO, Ward-2, Rourkela issued on assessee a notice under section 142(1) and completed assessment under section 144 . On apepeal the Tribbunal held that the Revenue could not place on record Circular giving powers to Jt. Commissioner to transfer case from one officer to any other officer Jt. Commissioner did not have power to transfer case of assessee from Asstt. Commissioner, Rourkela Circle, Rourkela to ITO, Ward-2, Rourkela for purpose of completion of assessment As the assessment proceedings had been validly initiated by Asstt. Commissioner, Rourkela Circle, Rourkela in case of assessee, issues in appeal required to be restored to file of Asstt. Commissioner, Rourkela Circle, Rourkela for de novo assessment. (AY. 2010-11)

Ekalavya career Academy Trust v. ITO (2022) 218 TTJ 762 / 217 DTR 209 / (2023) 146 taxmann.com 414 (Cuttack)(Trib)

S. 143(3): Assessment - Search and Seizure – Undisclosed sales – Intelligence Wing of GST -Papers recovered from the residence of ex=President of the assessee company and dealers – Statemnet used against the assessee – Opportunity of cross examination was not provided – Addition is unjustified . [S. 4, 131 , 132]

An information was received from Intelligence Wing of GST that a search and seizure operation was conducted by excise department upon assessee-company and also on residence of ex-president of company along with two other ex-employees . During search invoices of goods manufactured and sold by assessee were allegedly recovered from ex-director's house and statements of ex-director's and two ex-employees were also recorded . On basis of same, Assessing Officer concluded that assessee was suppressing its turnover by way of under-invoicing its sales, thus, there was alleged undisclosed sales and, accordingly, he made additions to income of assessee . On appeal the Tribunal held that during search proceedings, neither at premises of assessee nor from any other premises, any incriminating evidence with regard to undisclosed sales was found except invoices recovered from residence of ex-president and impugned additions were made solely on basis of same . Assessing Officer made impugned additions on basis of statements recorded from ex-employees and dealers at back of assessee and without giving assessee opportunity to cross-examine said statements from them . On facts additions made to income of assessee on basis of abovesaid material found and statements of ex-employees was unjustified and was deleted. (AY. 2013-14 to 2017-18)

DSG Papers (P) Ltd. v. ACIT (2022) 219 TTJ 194 / 217 DTR 49 / 99 ITR 241 / 147 taxmann.com 195 (Chd)(Trib)

S. 143(3) : Assessment – Rejection of books of accounts- No uniformity in sale of chicken- Highly perishable- Estimation of gross profits based on two months' statistics improper- Directed to allow 90% of total expenses after taking gross profit at 8%- Partly allowed.[S. 144]

The Tribunal held that the rates of chicken varied frequently depending upon demand and supply and other geographical reasons like weather conditions, and were highly flexible. Further, the products sold by the assessee were highly perishable Therefore, on the basis of two months' statistics, there could not be any estimation of gross profit for the remaining period and subsequent period. Therefore, taking into account the nature of business of the assessee the Assessing Officer was to allow 90 per cent. of total expenses claimed by the assessee in its financial statement and recompute the profits from the business taking into account gross profit at 8 per cent. on total sales. (AY. 2015-16, 2016-17)

Al Aziz Broilers v .ACIT (2022)97 ITR 41 (SN) (Chennai) (Trib)

S. 143(3): Assessment – Depreciation- All particulars of asset furnished-Deletion of addition is affirmed . [S. 143(1)]

All the details of the assets for depreciation were duly furnished in the Income-tax return. Return filed by assessee was processed by Assessing Officer by disallowing depreciation and demand was raised. Adjustment made u/s 143(1) was deleted . (AY. 2017-18)

Chhotubhai Vitthalbhai Patel v. Dy. CIT (2022)97 ITR 265 (Ahd) (Trib)

S. 143(3): Assessment – Income from undisclosed sources- Cash low household expenses- House located in small City- Income of two sons- Agricultural income- Deletion of addition is justified .

The Tribunal held that both sons of the assessee were earning separately and the family owned ancestral agricultural land, the income from there was also used for meeting the household expenses. Household expense shown acceptable. The additions deleted by the CIT (A) were justified. .(AY. 2013 -14)

ITO v. Ramesh Chand (2022)97 ITR 421 (Delhi) (Trib)

S. 143(3): Assessment - Estimation of turnover – Value added tax and Service tax - Estimation of gross profit on difference in turnover not justified.

The Tribunal held that the comprehensive annual maintenance contracts were liable for value-added tax as well as service tax at respective rates as per rules prescribed for the levy of tax on turnover. Accordingly, the assessee had charged value-added tax and service tax of 70 per cent. basic value, which resulted in overlapping of turnover in both value-added tax and service tax returns. Further, the assessee had filed a reconciliation statement explaining the turnover reported in the service tax and value-added tax returns and the financial statement filed for the AY. There was no difference in the financial statement when compared to the turnover reported in the service tax and value-added tax returns. There was

no error in the reasons given by the Commissioner (Appeals) to delete additions made by the Assessing Officer towards estimation of gross profit on turnover. (AY. 2014-15)

Dy. CIT v. Precision Informatic (Madras) Pvt. Ltd. (2022) 96 ITR 1 (SN) (Chennai) (Trib)

S.143(3): Assessment – Survey -Difference between closings tock found and that shown in books —Books of account not rejected – Addition based on estimation is held to be not justified . [S. 133(6) 133A]

Held that the findings of both the authorities were without any basis or material as the books of account duly audited by the auditors were produced by the assessee but not faulted with during the course of assessment proceedings or during the appellate proceedings. Moreover the Assessing Officer had not rejected the books of account before making the addition on account of stock difference which was also not correct and not in accordance with the provisions of the Act. Therefore the addition and consequential addition on account of post survey sales, made on the basis of estimation and surmises, could not be sustained.(AY.2010-11)

Md. Ismail Saree Creations v. ITO (2022)95 ITR 15 (SN)(Kol) (Trib)

S. 143(3): Assessment-Limited scrutiny-Newspaper publication-Instructions are binding on revenue –Instructions cannot be ultra vires of section 119-Other expenses-Direct trading expenditure which were wrongly included in other expenses are to be excluded from the limited scrutiny. [S. 37 (1), 119]

Assessing Officer issued notice under section 143(2) of the Act in accordance with directions issued by CBDT under section 119 for initiation of limited scrutiny The said board Instructions which provided guidelines for selection of a return for scrutiny was issued only for efficient management of Act, thus, the said Instructions could not be said to be ultra vires section 119 of the Act.

Assessee is engaged in business of newspaper publication Assessment was selected for limited scrutiny on ground that it claimed higher expenditure under head other expenses (OE) as compared to preceding year. Assessing Officer disallowed 20 per cent of expenditure as assessee failed to produce relevant vouchers. Assessee claimed that certain direct expenditure, i.e. composing expenses, ink expenses etc. was wrongly claimed as other expenses. Held that since assessee's return was selected for scrutiny for limited purpose to verify other expenses claimed in profit and loss account, direct trading expenditure which were wrongly included in other expenses were to be excluded from limited scrutiny. Instruction No 4 of 2016 dt 13-7 2016. (AY. 2015-16)

Janpaksh Printing & Publishing. v. ITO (2022) 196 ITD 286 / 220 TTJ 854 (Jabalpur) (Trib.)

S. 143(3):Assessment-Addition can only be made in respect of profits / income derived and not the entire turnover.[S. 263]

Assessee, engaged in wholesale trading of ghee, edible oil, vanaspati ghee etc., filed its return of income and assessment was completed under section 143(3). During audit, it was observed

that there was a difference in total turnover as declared in profit and loss account as against in sales tax
assessment order. Thus, CIT (Admin.) invoked his revisionary jurisdiction under section 263 and set aside order of Assessing Officer. Subsequently, assessment order was passed under section 143(3) by adding difference seen in total turnover back to total income of assessee. It was noted that assessee had contended that said difference was due to 'consignment sale' made by him on behalf of a consignor but failed to prove same. However, it was immaterial to determine that purported sale was consignment sale or ordinary sale as even if same was to be considered as ordinary sales entire consideration could not be treated as income but only extent of estimated profits embedded in sales. Thus, the matter was remanded back to file of Assessing Officer with direction to make addition only to extent of estimated profits

Assessee, engaged in wholesale trading of ghee, edible oil, etc., in name and style of its proprietorship had claimed interest paid on borrowed capital under head 'income from other sources'. Assessing Officer observed that assessee was maintaining two sets of books of account and had shown said loans in its personal book of account even when same were being utilized for business purposes. The Assessing Officer thus disallowed interest claimed as deduction under section 36(1)(iii). It was noted that in assessee's balance sheet his proprietorship was shown as a debtor and on perusal of statement of affairs as on 31-3-2009, it was evidently clear that entire capital of proprietorship had been sourced from unsecured loans which was much lower than capital invested. Further, investment in fixed assets, cash in hand and some amount of shares etc. had been secured with help of capital of assessee and profit arising from same had been duly offered to tax in computation. It was also noted that assessee had deducted TDS from all payees and amount of interest were also paid by account payee cheque only. Thus, it could not be said that unsecured loan so taken were utilized elsewhere other than making investment in his own proprietary. Therefore, interest incurred on such loans was liable to be
allowed as deduction under section 36(1)(iii) (AY. 2009-10)
Nikhil Garg v. ITO (2022) 95 ITR 92 /216 TTJ 33 (UO) 145 taxmann.com 171 (Jaipur) (Trib)

S. 143(3): Assessment-Non existing company-amalgamation-The assessment order having been passed in the name of a non existent entity, it is invalid and quashed-Being jurisdictional error, not protected u/s 292B of the Act. [S.92CA(3)), 144C, 292B]

Held that TPO passed the order u/s 92CA(3) proposing transfer pricing adjustment in the name of a non existent entity and based thereon the AO proposed the draft assessment order. The assessee raised the objections before the DRP with the name and address with PAN, but not considered at all. The assessment order having been passed in the name of a non existent entity, it is invalid and liable to be quashed. Being jurisdictional error, not protected u/s 292B of the Act.(AY. 2016-17)

Honda Cars India Ltd. (A successor in interest of Honda Motor India Pvt. Ltd.) v. DCIT (2022) 64 CCH 371/ 216 TTJ 946 / 212 DTR 284 (Delhi)(Trib.)

S. 143(3): Assessment-No direction of Appellate Tribunal to do fresh assessment-Passing remark by the Appellate Tribunal cannot be considered as observation of the Appellate Tribunal. [S. 254(1)]

Where Tribunal set aside order of Assessing Officer and there was no direction to do any fresh assessment, Assessing Officer had no jurisdiction to pass any further order. Passing remark by the Appellate Tribunal cannot be considered as observation of the Appellate Tribunal. (AY. 2014-15)

Jaya Prakash. v. ITO (2022) 192 ITD 316 (Bang) (Trib.)

S. 143(3): Assessment-Search-Merely because a hard disk belonging to assessee was found and seized from business premises of assessee, gives no ground for addition to the AO- when no incriminating or corroborative documents have emanated therefrom or otherwise.[S. 132, 292]

Held that no incriminating or corroborative documents were found to establish that expenditure mentioned in seized document is true and correct. There is merit in the finding of the CIT(A), that had there been inflation in expenses or bogus/inflated purchases, then it should have been found during the search proceedings. Further, although, search action took place on 4-2-2010, however, AO has only taken the figure up to September 2009 and nothing has been mentioned regarding the period between 1-10-2009 to 3-2-2010. Also, the assessee has been subjected to sales tax and Excise Duty and no adverse inference is on record to show that there is any difference between the sales and production figures in the audited accounts of the company. In this view of the matter, no infirmity is found in CIT(A)'s order. (AY.2010-11)

ACIT v. Lepro Herbals (P.) Ltd (2022) 94 ITR 225/216 TTJ 682/ 215 DTR 233 (Delhi) (Trib)

S. 143(3):Assessment-Limited scrutiny-Disallowance of deduction of interest not subject matter of limited scrutiny-Addition deleted-e-No loan taken during year-Interest disallowance is not valid when no disallowance was made in earlier years or subsequent years.[S. 57]

Held that the case was selected for limited scrutiny for two reasons : (i) mismatch between the income credited to the profit and loss account under other heads of income and income from heads of income other than business or profession; and (ii) large cash deposits in savings bank accounts. However, the Assessing Officer had made the addition or disallowance, not on these two counts, but on issues which were not the subject matter of limited scrutiny, and there was nothing on record to suggest that the Assessing Officer had taken necessary approval from the Principal Commissioner or Commissioner for converting the limited scrutiny to a full scrutiny. As a result, the order of the Commissioner (Appeals) was set aside and the Assessing Officer was directed to delete the addition. As regards interest expenditure, the assessee has not taken any new loan taken during year. Interest disallowance is not valid when no disallowance was made in earlier years or subsequent years (AY. 2014-15)

Dharam Bhushan Jain v. ACIT (2022) 94 ITR 1 (Delhi)(Trib)

S. 143(3)): Assessment-Deduction of tax at source-Mismatch-Income declared no deduction of tax at source claimed-Deletion of addition is proper [Form No 26AS]

The Assessing Officer observed from form 26AS that a sum of Rs. 61,372 was not offered to tax and the discrepancy was not reconciled by the assessee. He made an addition for the sum. The Commissioner (Appeals), after perusing the details of the income and the amount of tax deducted at source, accepted the assessee's claim. On appeal the Tribunal held, that the assessee furnished details of the amounts received and tax deducted at source thereon. Some amount of tax deducted at source in form 26AS was not claimed by the assessee. Order of CIT(A) is affirmed. (AY. 2013-14)

ACIT v. Silver Jubilee Motors Ltd. (2022) 94 ITR(T) 19 (Trib) (SN)(Pune) (Trib)

S. 143(3): Assessment-Computation-Income from other sources-Mistake in computation sheet-Directed to take correct figure thereafter to compute tax payable which should be nil. [S.144C(13)]

Held there was an error apparent in the computation sheet and therefore demand of Rs. 45 Lakhs had arisen. If the correct income under the head income from other sources was taken, the resultant demand would be nil. The Assessing Officer was directed to take correct figure thereafter to compute the tax payable which should be nil. (AY. 2016-17)

Timblo Shipyards P. Ltd. v. NEAC (2022)94 ITR 53 (SN)(Mum)(Trib)

S. 143(3) :Assessment-Charge of income-tax-Order passed by National Company Law Tribunal under section 31 of Insolvency and Bankruptcy Code, 2016 has overriding effect over anything inconsistent contained in Income-tax Act and it shall be binding on all respective entities including other stakeholders, which include Central Government, State Government and other local bodies-Matter remanded to the Assessing Officer. [S. 4, Insolvency and Bankruptcy Code, 2016, S 31, 238]

Assessee-company, engaged in the business of Railway Siding Utilization Activity, filed return of income. The Assessing Officer completed assessment after making various additions. The Commissioner (Appeals) confirmed the additions. On appeal before the Tribunal the assessee raised additional ground and submitted that in the light of the order of the National Company Law Tribunal and peculiar facts of the case, the Tribunal would ascertain that realisable tax liability of assessee for the assessment year under consideration, i.e., assessment year 2010-11 as Nil. The order passed by the National Company Law Tribunal under section 31 of the Insolvency and Bankruptcy Code, 2016 has overriding effect over anything inconsistent contained in the Income-tax Act and it shall be binding on all the respective entities including other stakeholders, which include Central Government, State Government and other Local Bodies. Since the present appeal involving assessment year

2010-11 relates to the period prior to the acquisition of control by the Resolution Applicant over the assessee-company pursuant to this plan, all dues under the provisions of the Income-tax Act, 1961 including taxes, duty, penalties, interest fines, cesses, etc. shall stand extinguished by virtue of the order of the National Company Law Tribunal and all proceedings including the appellate proceedings pending on the date of the order of the National Company Law Tribunal including the present proceedings relating to the prior period to the date of order shall stand extinguished and all consequential liabilities, if any, should be deleted and should be considered to be not payable by the company. In the light of the order of the National Company Law Tribunal (NCLT) dated 12-2-2018 passed in assessee's case, it would be fit to restore the case for the assessment year under consideration to Assessing Officer for taking necessary action in accordance with law.

Palogix Infrastructure (P.) Ltd. v. (2022) 193 ITD 329 (Kol) (Trib.)

S. 143(3): Assessment-Protective assessment-Excess cash recovered from registered office of assessee-No substantive addition was made in hands of any other person-Addition u/s 69A would not survive. [S. 69A, 132,]

Assessee builder/developer- showing income derived
from sale of flats on sale- remaining unsold shown as inventories as 'stock-in-trade'- no addition on account of deemed rental income could be made in respect of unsold stock of flats.

During course of search proceedings at registered office of assessee, excess cash was found. The assessee explained that cash belong to Fisher Health Resorts (P) Ltd. Assessing Officer, made the addition on protective basis under section 69A of the Act. On appeal the Tribunal held that no substantive addition had been made in hands of Fisher Health Resorts (P) Ltd or in hands of any other person. Accordingly protective addition made in hands of assessee company did not survive and thus addition made in hands of assessee on protective basis under section 69A was deleted

Prior to assessment year 2018-19, there was no provision provided in Act to tax deemed rental income on unsold stock of properties lying as stock-in-trade under head income from house property. Therefore, where assessee builder/developer had been showing income derived from sale of flats as and when they were sold and flats remaining unsold were shown as inventories in balance sheet of assessee as 'stock-in-trade', no addition on account of deemed rental income could be made in respect of unsold stock of flats held as 'stock in trade' upto assessment year 2017-18. However, amendment had been brought in statute in section 23(5)
from assessment year 2018-19 providing a moratorium period of two years, hence, no addition could be made for assessment year 2018-19 also.(AY. 2016-17 to 2018-19)

Pegasus Properties (P.) Ltd. v. DCIT v. (2022) 193 ITD 514 (Mum) (Trib.)

S.143(3): Assessment-Provision for gratuity-Disallowed in the return-Addition is held to be not valid. [S. 37(1)]
Employee's contribution to ESI/PF was deposited by assessee - employer before due date of filing return under section 139(1) but after due date prescribed in amended section 36(1)(va)- no disallowance could be made for said assessment year as per

amendment to section 36(1)(va) brought by Finance Act, 2021 which came into effect from 1-4-2021 - no retrospective applicability

Held that in the return of income filed along with computation of income the provision for gratuity which had been debited in profit/loss account had been disallowed by assessee itself and no claim for provision for gratuity had been made by assessee while filing its return of income, addition made towards provision for gratuity was not valid.

Assessing Officer disallowed expenditure with respect to employee's contribution towards PF/ESI on ground that there was delay in deposition of same by assessee as per Explanation to section 36(1)(va). No disallowance could be made for assessment years prior to assessment year 2021-22 as per amendment to Section 36(1)(va) brought by Finance Act, 2021 which came into effect from 1-4-2021 as same has no retrospective applicability. Therefore, addition made by way of adjustment towards deposit of employees' contribution towards ESI and PF paid before due date of filing of return of income under section 139(1) was to be deleted - (AY. 2019-20)

Shakti Apifoods (P.) Ltd. v. Assessing Officer (2022) 193 ITD 751 (Chd.) (Trib.)

S. 143(3): Assessment-Survey-Settlement Commission-Housing project-On money-Natural justice-Order passed by the Assessing Officer only on the basis of rejection order of the Settlement commission was not valid-The Assessing Officer is directed to pass the order in accordance with law after considering the submissions of the Assessee.[S.80IB(10), 133A, 245D(1), 245D(4)]

During course of survey certain materials relating to unaccounted receipts for sale of residential flats were impounded. The assessee admitted unaccounted income. The assessee filed an application before the Settlement Commission which was allowed u/s245D(1) of the Act. The application was rejected while passing the order u/s 245D(4) of the Act on the ground that the assessee has not disclosed the true income. The rejection application of the Settlement Commission was affirmed by the High Court. The Assessment proceedings which were earlier abated got resumed and the Assessing Officer proceeded with the same. In the Course of assessment proceedings the assessee made the claim u/s 80IB(10) of the Act. The Assessing officer rejected the claim of the assesee u/s 80IB(10) of the Act, only on the ground that the Settlement Commission has dismissed the petition and assessed the gross on money on estimate basis as income of the assessee. On appeal the CIT(A) affirmed the order of the Assessing Officer. On appeal to the Tribunal held that order passed by the Assessing Officer which was affirmed by the CIT(A) was only on the basis of rejection order of the Settlement commission was not valid. The Assessing Officer is directed to pass the order in accordance with law after considering the submissions of the Assessee.(ITA No. 3128 /Mum/ 2018 / 3243 /Mum/ 2018 dt 22-6-2022 Bench 'D') (AY. 2013-14, 2014-15)

Rashmi Infrastructure v. Dy.CIT (Mum)(Trib) www.itatonline.org

S. 143(3): Assessment-Protective assessment-Income form other sources-No substantive addition was made in the other party-Addition was deleted [S. 56]

Assessee explained that savings bank account where deposits were made was opened for purpose of Junior college, run by Society of Education.As gross receipts shown by Society of Education did not match with cash deposit claimed by assessee, total credit made in bank account treated as income of assessee on protective basis.CIT (A) held that in the absence of any prior substantive addition in the case of Society for education, no protective assessment could have been made by the Assessing Officer in the hands of the Assessee, accordingly deleted the addition. On appeal by revenue, the Tribunal affirmed the order of CIT(A). (AY. 2016-17)

ITO v. Keshava Nanda Kakati. (2022) 192 ITD 445 (Guwahati) (Trib.)

S. 144 : Best judgment assessment-Reassessment-Alternative remedy High Court in writ jurisdiction cannot consider facts-Writ was dismissed [S. 139,139A, 144B 147, 148, Art, 226]

National Faceless Assessment Scheme - Disposal of objections and framing of assessment was done by AO- only orders were conveyed by NFAC instead of AO - claim of petitioner that NFAC was not income tax authority to exercise power of framing assessment was invalid

Dismissing the writ petition the Court held that the assessee had neither challenged the validity of the E-Assessment Scheme nor the validity of section 144B of the Act. The assessee had neither filed his return for the assessment year 2016-17 under section 139(1) of the Act nor under section 148 of the Act. According to section 139(1) of the Act, it is mandatory for an individual to file the return if his total income during the previous year exceeds the maximum amount which is not chargeable to Income-tax. Therefore, according to Explanation 2(a) to section 147 of the Act, there was a deemed escapement of income by the assessee. The notice in the present case was dated March 27, 2021. The notice had also been digitally signed on the same day. Thus, the contention of the assessee that the notice under section 148 was beyond limitation did not hold any force and had to be rejected. The address at which notice was sent by the Revenue was one of the addresses mentioned by the assessee on his portal in terms of section 282 of the Act read with rule 127 of the Income-tax Rules, 1962. The notice under section 148 was uploaded on the e-filing portal of the assessee on March 27, 2021. The assessee had himself chosen the communication address to be at Faridabad, Haryana which was clearly reflected in the document of permanent account number jurisdiction details of the assessee. The assessee had argued that he was not obliged to file any return for the relevant year, as there was no income. The plea of the assessee was that he got an amount as an advance by virtue of the orders of the court and that could not be assessed as an income in his hands for the assessment year 2016-17. Moreover these were disputed questions of fact, which could be agitated before the authority below. The court in the writ jurisdiction could not entertain such pleas. The notice under section 148 and consequent assessment were valid.

Petitioner challenged notice issued under section 142 as well as ex parte assessment framed under section 144 on ground that NFAC was not income tax authority to exercise power of framing assessment. In National

Faceless Assessment Scheme disposal of objections and framing of assessment was done by Assessing Officer, only orders were conveyed by NFAC, thus, claim of petitioner that NFAC had no authority to frame assessment was without any basis (AY.2016-17)

S. K. Srivastava v. CBDT(2022)445 ITR 390 / 327 CTR 397/215 DTR 385 /139 taxmann.com 6 (Delhi)(HC)

S. 144 : Best judgment assessment-Names struck off from Register of Companies-Grant of time to respondents to file counter-Affidavits-Assessment order stayed. [S. 147, Art, 226]

On a writ petition challenging the assessment order passed by respondent No. 2 under section 144 / 147 of the Income-tax Act, 1961 on the ground that it was issued in the name of a dissolved or struck off company and in the alternative seeking directions to respondent No. 3 to amend the Faceless Appeal Scheme, 2020 and make a provision for those entities against whom assessment had been made, despite being "struck off from the register of companies", to be able to access and utilize their statutory right of appeal and also requesting for an opportunity of hearing. The court, on the request of the respondents, stayed the assessment order and granted time to file their counter-affidavits.

Kaushik Kumar Gupta v. ITO (2022)442 ITR 449 (Delhi) (HC)

S. 144 : Best judgment assessment-Discrepancy in dates of actual hearing and dates of service of notices mentioned in assessment order-Not granted an effective opportunity of hearing-Assessment order and consequential penalty notices set aside-Matter remanded. [S. 263, 271(1)(c), Art, 226]

The Assessing officer passed the order u/s 144 of the Act against which the assessee filed writ petition. Allowing the petition, the court held that the corresponding notice dates did not tally with the hearing dates. The dates of service of notice as mentioned in the order were January 22, 2021, February 23, 2021 and September 14, 2021. If the notices had been served, the dates of hearing which would have been indicated, should have been subsequent to February 1, 2021. No hearing had taken place after February 1, 2021 and yet notices were supposed to have been served on the assessee on at least two dates after the last hearing date. The assessee was not given an effective opportunity of hearing before the assessment order was passed. Therefore, the assessment order and the consequential penalty notices issued under sections 271(1)(c) and 273(1)(b) were set aside and the matter was remanded to the Assessing Officer. (AY.2015-16)

Gangadhar Jena v. PCIT(2022)441 ITR 642 / 209 DTR 353/ 324 CTR 376 (Orissa) (HC)

S. 144: Best judgment assessment-Show cause notice –The Assessee sought two weeks time to respond the notice-Less than on day notice was given-Principle of natural justice is violated-Order was quashed and remanded back for de novo assessment [S. 142(1), 147, Art, 226]

Assessing Officer issued show cause notice under section 142(1) with less than one full working day time to respond to notice. Assessee managed to provide partial response to notice and sought for two weeks' time to send other documents.The Assessing Officer passed

order u/s 144 read with section 147 of the Act. On writ allowing the petition the Court held that the reasonable time was not given to assessee to respond to show cause notice and that tantamount to infraction of principle of natural justice and, therefore, matter was to be remanded back to Assessing Officer for de novo assessment from show cause notice stage. (AY. 2016-17)

Swapna Manuel v. ACIT (2022) 284 Taxman 651 (Mad.)(HC)

S. 144 : Best judgment assessment – Search and seizure- Failed to file return in response to notice- Best judgement assessment valid.[S. 139]

Held, thatthe assessee did not file the return of income after notice. Therefore, the assessment under section 144 was valid.(AY. 2007 -08, 2010-11 to 2014 -15)

Dy. CIT v. Wind World India Ltd. (2022)98 ITR 22 (Mum) (Trib)

S. 144 : Best judgment assessment - Lack of effective representation – Matter remanded . [S. 254(1)]

Allowing the appeal the Tribunal held that there being no proper participation in the proceedings before the AO owing to the alleged omission of assessee's authorised representative to make proper compliances, the assessment order was set aside . The Tribunal held that the assessee should not suffer due to not making proper prestation by the Authorised Representative . (AY. 2013-14)

H. P. Agro Industries Corp. Ltd. v. ITO (2022) 216 DTR 186 / 218 TTJ 778 (Chd)(Trib)

S. 144 : Best judgment assessment -Details not filed – Best judgement is held to be justified . [S. 142(1)), 143(2)]

Held that no material had been placed by the assessee to controvert the findings of the lower authorities. In the absence of any contrary material brought on record to rebut the findings of the lower authorities, there was no reason to interfere with the order of the Commissioner (Appeals). Order was affirmed . (AY.2008-09)

Rishi Prakash v. ITO (2022)99 ITR 10 (SN)(Delhi) (Trib)

S. 144 : Best judgment assessment -Failure to produce vouchers and books of account – Not owning the Trucks - Estimation of profit – Failure to produce books of account – Assessing officer estimating at 12 Per Cent on gross receipts- CIT(A) reducing to 5 Per Cent - Tribunal applied 2.5 Per Cent of net profit rate on gross receipts . [S. 44AB, 143(3), 145(3)]

Tribunal held that though the Assessing Officer had applied the rate of 12 per cent. and the National Faceless Appeal Centre had reduced it to 5 per cent., no cogent reason had been given for such estimation. The past history or trend of the assessee had not been considered by the authorities. Therefore, the application of a net profit rate of 2.5 per cent. on the gross receipts would meet the ends of justice inasmuch as any leakage of revenue would be covered and the assessee’s non-production of books of account and vouchers would also be taken care of. Followed, CIT Central and United Provinces v. Laminarain Badridas (1973) 5 ITR 170 (PC) , Berger Paints India Ltd v.CIT (2004) 266 ITR 99 (SC) (AY.2013-14)

New Truck Operators Union v. ITO (2022) 99 ITR 522 (Chd) (Trib)

S. 144 : Best judgment assessment -Estimation of income — Producing complete production details of manufacturing of bricks — Consistency of business - Partly confirmed . [S. 144]

Held that the income estimated by the Assessing Officer was almost 95.87 per cent. which had been partly deleted by the Commissioner (Appeals). The finding that there was suppression of sales was not supported by any credible evidence and only estimation had been made about the excess wastage claimed by the assessee. The assessee gave complete production details of the manufacturing of bricks before the Assessing Officer. Looking to the consistency of the business carried out by the assessee in the past and the financial statements being audited and accepted by the Revenue authorities, in order to bring an end to the controversy a net profit of eight per cent. was to be computed on the gross turnover of MB shown at Rs. 18,98,680 and after deducting the profit offered by the assessee, the remaining amount was the income confirmed in the hands of the assessee.(AY.2010-11)

Tarun Chakraborty v. JCIT (2022)100 ITR 20 (SN)(Kol.) (Trib)

S. 144 : Best judgement assessment -Income from undisclosed sources - Estimation of profits- Profits declared at 14.80%- Amount deposited in account much higher than turnover- Assessing officer applied net profit at 8%- Additions justified-Interest income not disclosed – Addition is justified .[S. 69 , Form 26AS]

The assessee declared net profit rate at 14.80 percent. Further, based on the information received by the Assessing Officer, it was revealed that the assessee was operating 12 bank accounts and the total amount deposited during the year under consideration was much higher than the turnover. The Tribunal held that Assessing officer .had rightly made the additions. Interest income as per form no 26AS was not disclosed . Addition is held to be justified. *(*AY. 2014-15)

Mohan Chandra Mondal v. ITO (2022) 97 ITR 53 (SN) (Kol) (Trib)

S. 144 : Best judgment assessment - Cash deposited in assessee's Bank Account — Burden of proof on assessee that bank account not his — Matter remanded for adjudication afresh. [S. 143(3)]

The Tribunal held that the Assessing Officer was to adjudicate the matter recording definite findings of fact, by a speaking order after allowing the assessee a reasonable opportunity of being heard in the matter and, needless to add, within the time frame permissible by the amended statute. Although this amounted to converting a section 144 assessment into a section 143(3) assessment, impermissible in law, a decision on the merits, after proper examination of evidence and hearing both the sides, was the only course warranted in the interest of justice. (AY: 2005-06)

ACIT v. Kamlesh Kumar Sahu (2022) 96 ITR 53 (SN) (Jabalpur) (Trib)

S. 144 :Best judgment assessment-Estimation of income must be on reasonable basis in congruent to the result of the prior previous years-Principle of consistency must be followed. [S. 143(3)]

Held that the net profit rate of 0.4% had been accepted by this Tribunal in one of the sister concern of the assessee. Also, the net profit declared by the assessee for A.Y. 2009-10 to 2011-12 was within the range of 0.2 % to 0.29 & and even in the scrutiny proceedings the revenue authorities in assessee's own case have estimated net profit below the rate of 1% so by no means estimating the net profit @ 8% could be justified, looking to the fact that there is

no change of business during all these years, books of account are duly audited, no specific error has been pointed out by both lower authorities. Further placing reliance on the decision of this very Tribunal in the case of M/s. B.B.C. Project Services Pvt. Ltd, the Hon'ble Tribunal opined that the application of net profit rate of 0.6% on the turnover of contract business during the year will meet the end to justice and issued directions accordingly. (AY. 2012-13, 2013-14,2014-15)

DCIT v. Bridge & Building Construction Co. (P.) Ltd (2022) 94 ITR 515 (Kol)(Trib)

S. 144A : Power-Joint Commissioner-Direction-Transfer pricing-Arm's Length Price-Must be given opportunity to be heard-Order not valid [S. 37, 40A(2), 92(1), 139, 142(1), Art, 226]

The assessee filed a return under section 139 of the Act for the assessment year 2016-17, which was examined by the Deputy Commissioner by issuing notices under section 142(1). A dispute arose as to whether the amounts paid by the assessee to its Singapore subsidiary were inflated so as to reduce the profit and the Income-tax liability of the assessee. Under these circumstances, the Deputy Commissioner issued a notice dated November 13, 2018 and called upon the assessee to show cause as to why a reference to a Transfer Pricing Officer should not be made in terms of section 92(1) read with Instruction No. 3 of 2016 dated March 10, 2016 ([2016] 382 ITR (St.) 36). The assessee replied to the notice, thereafter, no decision was taken as to whether the case was referred to the Transfer Pricing Officer or the assessment was to be completed by the Deputy Commissioner as the jurisdictional Assessing Officer. During the course, it appeared that the Deputy Commissioner made a reference to the Joint Commissioner under section 144A of the Act. The Joint Commissioner by a direction directed the Deputy Commissioner to disallow 2.5 per cent. of the transacted amount amounting to Rs. 28,05,26,782 under section 40A(2)(a) and section 37 of the Act. The consequential assessment order dated December 27, 2018 of the Deputy Commissioner was challenged on the ground that the directions of the Joint Commissioner was not in accordance with section 144A of the Act. On writ allowing the petition the Court held that, the order passed by the Joint Commissioner to complete the assessment in a particular manner was prejudicial to the assessee. The assessee should have been called for hearing by the Joint Commissioner. As there was a violation of section 144A the consequential assessment order dated December 27, 2018 passed by the Deputy Commissioner was quashed.(AY.2016-17)(SJ))

MRF Ltd v. Dy. CIT (2022)445 ITR 103/ 215 DTR 165/ 328 CTR 976/ 140 taxmann.com 512 (Mad)(HC)

S.144B: Faceless Assessment- A bonafide request made for personal hearing through video conferencing on the portal-window for submitting reply was closed before the stipulated time-A gross violation of principles of natural justice-Order was quashed and set aside [S. 148, Art. 226]

Show cause notices were issued to the petitioner requiring it to show cause as to why the proposed variation should not be made for concerned years and replies were sought from the petitioner and an option was given to the petitioner to seek personal hearing through video conferencing. Option for submitting a reply and seeking a personal hearing on the "Dashboard of the Income Tax Portal" was found to be closed by the petitioner on or about 12:30 PM, i.e. well before the time limit given in the show cause notices that is, 23:59 hours of 19.03.2022. Due to the untimely/premature closure of the window, the petitioner was

unable to file the reply and was also prevented from seeking an opportunity for a personal hearing.
Held that proceedings done by the NFAC suffer from gross violation of principles of natural justice and thus, the petitioners cannot be thrown out on the ground of alternative remedy. The Assessment order passed was declared invalid and quashed and set aside by providing a reasonable opportunity to submit the reply and if so provide a personal video conference hearing. (AY. 2013-14, 2016-17))
Ramesh Chandra v. NFAC (2022) 216 DTR 293 / 327 CTR 744 (Raj)(HC)
Mahaveer Infra Engineering (P) Ltd v. NFAC 2022) 216 DTR 293 / 327 CTR 744 (Raj)(HC)

S. 144B : Faceless Assessment-Not granting personal hearing-Unexplained investments-Mutual funds-Joint names-Factual dispute-Pendency of appeal-Writ petition was dismissed [S. 69, 156, 246A, Art, 226]

Assessing Officer passed reassessment order making additions in hands of assessee with respect to investments made in mutual funds. Assessee filed writ challenging additions made by AO on ground that no personal hearing was provided. Dismissing the petition the Court held that whether investment in mutual funds were made by her husband or assessee, dispute involved being factual in nature against which appeals had already been filed (AY. 2016-17, 2018-19)

Afsha Talwar v. UOI (2022 289 Taxman 696 (Delhi)(HC)

S. 144B : Faceless Assessment –Natural justice-Opportunity of video conference was not provided-Order was set aside [S. 148, Art, 226]

On writ allowing the petition the Court held that the opportunity of video conference was not provided. The Assessing Officer was directed to give one more opportunity of hearing. The order was set aside. (AY. 2014-15)

Harsha Bhavesh Patel (Smt) v. NFAC (2022) 216 DTR 217 (Karn)(HC)

S. 144B : Faceless Assessment –Principle of natural justice-Technical difficulties-Order passed without granting an opportunity of hearing with sufficient time-Order was set aside.[S. 80P, 144 147, Art, 226]
Assessee is a primary agricultural co-operative society catering to needs of agriculturist. Assessing Officer passed assessment order under section 147 read with section 144 of the Act. On writ it was contended that the assessee was facing technical difficulties for submitting documents and accounts online by availing e-facility and thus had failed to file returns.Further draft assessment order was passed on 20-3-2022 and within six days, i.e., on 26-3-2022 final assessment order had been passed. Thus, little to no time to make

submission or avail personal hearing was granted to assessee. Allowing the petition the Court held that since no opportunity of hearing was given to assessee before finalizing assessment, impugned assessment order was set aside and the Assessing Officer was directed to give assessee an opportunity to file its documents, make its submissions and personal hearing. (AY. 2017-18) (SJ)

Muhavoor Primary Agricultural Co-operative Society Ltd. v. NFAC (2022) 289 Taxman 471 (Mad)(HC)

S. 144B : Faceless Assessment-Personal hearing request was rejected-Order was quashed and set aside-Matter remanded back to Assessing Officer for a fresh decision. [S. 143(3),144B(7)(vii), Art, 226]

Assessee filed writ petition challenging assessment order passed under section 143(2) and contended that impugned assessment order was passed in violation of section 144B(7)(vii) on the ground that request for personal hearing by way of reply/objection to show cause notice and draft assessment order but request for personal hearing was declined. Allowing the petition the Court held that requirement of giving an assessee a reasonable opportunity of personal hearing is mandatory and when an assessee has a vested right to personal hearing, same has to be given, if assessee asks for it. Order was quashed. Matter remanded. Followed Bharat Aluminium Co. Ltd. v. UOI (2022) 442 ITR 101 (Delhi)(HC). (AY. 2018-19)

Vikas Singhal. v. NFA (2022 289 Taxman 243 (Delhi) (HC)

S. 144B : Faceless Assessment-Violation of the principle of natural justice-Unable to respond due to technical glitch-Order was set aside and matter remanded [S. 143(3), Art, 226]

Writ petition was filed on the ground that no opportunity was given to respond to the show-cause notice and draft assessment as legal heir of the deceased-assessee. Allowing the petition the Court held that the order was passed in violation of principles of natural justice as the legal heir of the deceased assessee did not have a reasonable opportunity to file a reply to the show-cause notice and draft assessment order since the portal of the National E-assessment Centre was not working until the last date given for filing the reply to the show-cause notice and draft assessment order. Consequently, the final assessment order passed was set aside. Matter was remanded.(AY.2018-19)

Faqir Chand (Through Legal heir Sh. Kapil Muni) v. NEAC (2022)449 ITR 603 (Delhi)(HC)

S. 144B : Faceless Assessment –Principle of natural justice-Failure to grant opportunity of hearing through Video conferencing-Order was set aside.[S.143(3), 144B(7), 263, Art, 226]

Allowing the petition the Court held that the order passed without giving an opportunity of hearing through video conference was not only in violation of principles of natural justice, but also in violation of the mandatory provisions as contemplated under section 144B(7)(vii), (ix). It was incumbent upon the Department to accord a personal hearing to the assessee where such a request was made under section 144B(7). The assessment order was not

sustainable and was liable to be set aside. The matter was remitted back to the Assessing Officer for a fresh assessment after duly affording a reasonable opportunity of hearing to the assessee.(AY.2015-16)

Mudar Sudheer v. UOI (2022)449 ITR 344 (AP)(HC)

S. 144B : Faceless Assessment-Failure to issue show-cause notice or draft assessment order-Procedural irregularity-Natural justice-Assessment orders set aside with directions for issue of show-cause notices or draft assessment orders, hear assessees and pass assessment orders afresh [S. 143(2), 144C, Art, 226]

The assessment order was passed without issuing the show cause notice or draft assessment order. On writ allowing the petition, the Court held that though failure to issue the notices as provided in section 144B would certainly vitiate the proceedings as being in violation of the principles of natural justice, it is an infirmity that may be cured by permitting the show-cause notice and draft assessment order to be issued later. The failure to issue a show-cause notice or draft assessment order is a procedural irregularity. The court set aside the orders of assessment, barring one, and granted the respondents liberty to issue show-cause notices or draft assessment orders within four weeks, seeking responses, and after hearing the assessees, pass orders of assessment de novo.](AY.2017-18, 2018-19)(SJ)

P. T. Lee Chengalvaraya Naicker Trust v. NFAC (2022)449 ITR 351 / 219 DTR 185/ 329 CTR 613/(2023) 290 Taxman 52 (Mad)(HC)

S. 144B : Faceless Assessment-Natural justice-Sufficient time was not given to petitioner to respond assessment order-Matter is remand to the stage when the draft assessment order was issued.[S. 147, 148, Art, 226]

The draft assessment order was passed without giving a reasonable opportunity of hearing. The petitioner challenged the said draft order and also notice issued u/s 148 of the Act. The court did not interfere with the notice issued under Section 148 but gave relief to assessee by quashing assessment order dated 30th September 2021 and remanded the matter to the Assessing Officer to the stage when the draft assessment order was issued. Revenue relied on Amaya Infrastructure (P) Ltd v. ITO [2016] 383 ITR 498 /(2017) 79 taxmann.com 345 (Bom)(HC) (WP No. 8859 of 2021, dt. 13.12.21) (AY. 2013-2014)

B.K. Associates v. NEAC (Bom.)(HC) (UR)

S. 144B : Faceless Assessment-Natural justice-Personal hearing was not granted-Show cause-cum-draft Assessment order –Order was set aside [Art, 226]

The petitioner challenged the assessment order on the ground that show-cause-cum-draft assessment order was not served on the petitioner. Counsel for respondents and as an Officer of the Court, in fairness states that the grievance of petitioner that show cause-cum-draft assessment order was not delivered appears to be a justified reason. The Court remanded the matter for denovo consideration. (WP No. 7350 of 2021, dt 20.12.21) (AY. 2019-2020)

RBL Bank Limited v. ACIT (Bom.)(HC)(UR)

S. 144B : Faceless Assessment-Natural Justice-Personal hearing not granted-Order was quashed and set aside-Directed to grant personal hearing. [Art, 226]

One of the ground of challenge in the writ petition was the assessment order was passed without following the principle of natural justice, , no personal hearing was granted. Allowing the petition the Court held that when the assessee has made a request for grant of personal hearing, the request has to be granted. Followed Piramal Enterprises Limited v. ACIT (2021) 127 taxmann.com 189/ 281 Taxman 1 (Bom)(HC) (WP No. 1639 of 2021, dt. 25-8-21) (AY. 2018-2019)

Delta Global Allied Ltd. v. ACIT (Bom.)(HC)(UR)
S. 144B : Faceless Assessment –Natural justice-Draft Assessment order-Video Conferencing.-Request for personal hearing was not granted-Order was quashed and set aside-Directed to pass the order after granting personal hearing [Art, 226]

The order was passed without following the principle of natural justice. The petitioner has requested for personal hearing which was overlooked by the Assessing Officer. On writ allowing the petition the Court observed that what is averred in the Affidavit-in-Reply is contrary to what is there in the Assessment order and there is total non-application of mind in filing the Affidavit-in-Reply. At the same time, in view of what is stated in the Affidavit-in-Reply, the Court cannot express any satisfaction that Petitioner's reply to the show cause notice has been given due consideration. Certainly and admittedly, Petitioner has not been granted a personal hearing which was requested.Accordingly the order was quashed and set aside and directed to pass the order after granting personal hearing**.** WP No. 1639 of 2021 dt 25.-8-21) (AY. 2018-2019)
Rhenus Logistics India Pvt Ltd. v. ACIT (Bom.)(HC)(UR)

S. 144B : Faceless Assessment-Natural justice-less than two days to reply-Personal hearing was not given-- pure form of harassment of by Assessing Officer to the assessee, a tax payer--Directed the Assessing Officer to pay a sum of Rs 25, 000 as cost from his salary /personal bank account to PM Care fund- matter shall be placed before different Officer from the Officer who had passed the impugned order dated 22-4 2021-Order was set aside for denovo consideration. [Art, 226]

The draft assessment order dated 19-4-2021 was digitally signed at only 18. 40 P.M. OF 19-4-2021 but time to respond was given only till 23.59 hours of 20-4-2021, though there was lockdown in force in the State due to the second wave of COVID pandemic. In the show cause notice cum draft assessment order the amount mentioned was nil. In the assessment order the income assessed was Rs. 53, 80, 12,676 The petitioner was given less than 2 days to give reply to show cause notice cum draft assessment order and total taxable income was mentioned as NIL. Allowing the writ petition the Court held that the respondent shall strictly follow the mandatory provisions of Section 144B. The order and consequential notice of demands were set aside for denovo consideration. The matter shall be placed before different officer from the Officer who had passed the impugned order dated 22-4 2021. The court also observed that the Assessing Officer could not care for the assessee

and was not even conscious of what he was actually doing. This is a pure form of harassment to the assessee, a tax payer. The entire approach smacks of high handedness and don't care attitude. The court observed that by conduct, the Assessing Officer has compelled petitioner to knock at the doors of the court and thereby has also impinged on the valuable judicial time of the Court. Court directed the Assessing Officer to pay a sum of Rs 25, 000 as cost from his salary /personal bank account to PM Care fund. The petition was listed for compliance on 24-2-2022 for compliance.

Gstaad Hotels Pvt Ltd v. NFAC (2018) 218 DTR 265 (Bom.)(HC)

144B : Faceless Assessment –Natural justice-Assessment order passed without draft assessment order-No personal hearing given-Order was quashed and set aside. [S.133(6), 143(2),156, 271AAC,271B,.274, Art, 226]

Petitioner filed return of income. Petitioner's case was selected for complete scrutiny under the CASS and accordingly notice under Section 143(2) of the Act was issued. The assessment order was passed. On writ the petitioner contended that the assessment order, was not preceded by any draft assessment order as its required under Section 144B of the Act. There is also non compliance with the mandatory provisions of Section 144B of the Act, where sub Section 1(xvi)(b) provides for an opportunity to the assessee to be heard. Allowing the petition the court held that Sub Section 9 of Section 144B provides that any order not in accordance with the proceedings laid down in Section 144B will be non-est. Therefore, the assessment order is non-est. Accordingly the demand notice issued under Section 156 of the Act and show cause notices under section 274 r/w Section 271AAC and Section 271B, were quashed and set aside as non-est. (WP No. 1623 of 2021 dt 13-10-20021 (AY. 2018-19)

ND's Art World Private Limited v. NFAC (Bom)(HC)(UR)

S.144B: Faceless Assessment-Show cause notice was never served upon the petitioner-Natural justice-Personal hearing shall be issued at least seven working days in advance-Stricture-Harassment to assessee-Wasting precious judicial time and unnecessary expenditure on lawyers-The court held that the conduct of Assessing Officer was unacceptable and issuing of show cause notice cannot be just an empty formality.[S. 147,148, Art, 226]

The assessment order passed under section 147 read with 144B of the Act. On writ the petitioner contended that the show cause notice as to why the proposed variation should not be made was never served upon the petitioner. On writ allowing the petition the Court held that even if the Court proceed on the basis that show cause notice has been served on the petitioner, effective time given for responding was less than 10 working hours. The court held that the conduct of Assessing Officer was unacceptable and issuing of show cause notice

cannot be just an empty formality. Petitioner should have been given a reasonable time and passing such orders amounts to nothing but harassment to assessee. In these circumstances, the assessment order dated 23.03.2022 is quashed and set aside and the matter is remanded for denovo consideration. Petitioner shall submit its reply / response to the show cause notice dated 19.03.2022 within two weeks from today. The Assessing Officer shall pass fresh orders on or before 31.08.2022, after giving a personal hearing to petitioner. The notice for personal hearing shall be issued at least seven working days in advance. (WP (L.)No. 13394/2022 dt. 6-5-2022)

Chetan D. Divekar v. NFAC (Bom)(HC)(UR)

S. 144B : Faceless Assessment-Natural justice-Order passed without considering petitioners submission-Reasonable time not given to respond to show cause notice-Order and subsequent notices quashed-levied cost on the Assessing Officer Rs. 25,000 to be deposited to PM Cares Fund.[S.142(1),143(3),156, S.270A, 217AAC, Art, 226]
The Assessment order was passed under Section 143 (3) read with Section 144 B the Act together with notice of demand under Section 156 of the Act and show cause notice under section 274 read with section 270 A, 271 AAC of the Act. The petitioner filed the writ petition to quash the assessment order on the ground that the order has been passed without following principles of natural justice in as much as reasonable time to file response to the draft assessment order was not granted and even the response and documents filed earlier have not been considered in the draft assessment Order. Allowing the petition the High Court set aside the impugned assessment order, notice of demand as well as show cause notice and levied cost on the Assessing Officer Rs. 25,000 to be deposited to PM Cares Fund. (WP(L) No.11052 of 2021 dt 27-10-2021)

Parag Kishorchandra Shah v. NFAC (Bom)(HC)(UR)

S. 144B : Faceless Assessment –Natural justice-Personal hearing was not granted-Order was quashed and set aside [Art. 226]
In response to show cause notice the assessee requested for personal hearing. The order was passed without granting any opportunity of personal hearing. On writ the Court held that order of assessment was liable to be set aside on ground of violation of principles of natural justice. Directed to pass fresh assessment order within a period of four months.
Premlata Ramakant Fatehpuria v. PCIT (2022) 288 Taxman 54 (Bom) (HC)

S. 144B : Faceless Assessment-Principle of natural justice-Opportunity of hearing-Personal hearing through video conference was denied-Matter remanded [Art, 226]

The assessment order was passed without giving an opportunity of personal hearing through video conference. On writ the High Court set aside the order and remanded the matters back to the Assessing Officer for de novo consideration after granting an opportunity of personal hearing and after taking into further submissions that the petitioner may make. (WP No. 20076-2077 of 2022 dt 4-7-2022) (AY. 2016-17, 2017 18)

LKP Securities Ltd v. Dy.CIT (Bom)(HC)

S. 144B : Faceless Assessment –Best judgment assessment-Natural justice-Directed to afford due opportunity of hearing before passing final assessment order-Reassessment-Notices were seta side-Directed to consider objections and pass the order giving an opportunity of hearing [S. 144 147, 148, 156, 270A, Insolvency and Bankruptcy Code, 2016, Art, 226]

On a writ petition against the orders passed under section 144 read with section 144B and section 270A, the demand notice under section 156 of the Income-tax Act, 1961 for the assessment year 2018-19 on the grounds that they had been passed without granting the assessee an opportunity of personal hearing and without considering the legal effect of the assessee having emerged out of the corporate insolvency resolution process under the provisions of the Insolvency and Bankruptcy Code, 2016 and the reassessment notices issued under section 148 for the assessment years 2013-14 to 2017-18. The court set aside the orders passed under section 144 read with section 144B and section 270A and the demand notice issued under section 156 of the Income-tax Act, 1961 for the assessment year 2018-19 and remanded the matters to the Assessing Officer for giving an opportunity of personal hearing to the assessee before passing the final order. In respect of the notices issued under section 148 for the assessment years 2013-14 to 2017-2018, the Assessing Officer was to consider the objections raised by the assessee giving an opportunity of hearing. Matter remanded.(AY.2013-14 to 2018-19)

Vadraj Energy (Gujarat) Ltd. v. ACIT (2022)445 ITR 15 (Bom)(HC)

S. 144B : Faceless Assessment-Natural justice-Opportunity of hearing-High Court set aside assessment for de novo consideration, with a direction to concerned authority to pass assessment order and strictly comply with mandatory provisions prescribed under section 144B, considering all submissions made by assessee and also granting a personal hearing [S. 143(3),144B(7), Art, 226]

Assessee filed writ petition challenging faceless assessment order on ground that opportunity of personal hearing was not granted. High Court set aside assessment for de novo consideration, with a direction to concerned authority to pass assessment order and strictly comply with mandatory provisions prescribed under section 144B, considering all submissions made by assessee and also granting a personal hearing**.**

Praful M. Shah v. NAFC (2022) 136 Taxmann.com 295 (Bom)(HC)

Editorial: Notice issued in SLP filed by assessee, Praful M. Shah v. NAFC (2022) 286 Taxman 263 (SC)

S. 144B : Faceless Assessment –Final order passed without issuing draft assessment order-Matter remanded [S. 144B(1) (xvib), 156, Art, 226]

The assessment order was passed without issuing the draft assessment order as required under section 144B(1)(xvi)(b). According to the appellant, under section 144B(1)(xvi)(b) it was not mandatory and it was not indicated by the risk unit since the issue of draft assessment order fell within the purview of the risk unit. On a writ the Court held that there had been non-compliance with the mandatory procedure laid down under section 144B and hence the assessment order was non est. Therefore, the assessment order and the consequent demand and penalty notices were quashed and set aside.

Multiplier Brand Solutions Pvt. Ltd. v. ITO(2022)442 ITR 202 (Bom) (HC)

S. 144B : Faceless Assessment-Final order passed without issuing draft assessment order-Assessment order and subsequent demand notice is set aside. [S. 143(3), 144B(vii), 156, Art, 226]

The assessee-company was engaged in business of manufacturing tobacco products and real estate in whose case, an assessment order was passed making addition to the income by the NaFAC. However, the draft assessment order was not served on the assessee. On writ, the high court held that the expression 'shall' used in the opening of section 144B(1) ordinarily implies a mandate, the statute has to be looked at having regard to the legislative intent and purpose. Section 144B(1)(xvi) provides that the NaFAC on receipt of a draft assessment order from the assessment unit shall provide an opportunity to the assessee in case of variations prejudicial to the assessee's interest being proposed by serving a show-cause notice. The intention behind the service of such notice is to give an idea to the assessee about the nature of prejudicial variation, which he is required to meet during the hearing. Accordingly, final assessment order passed without issuing a show-cause notice in form of draft assessment order to provide an opportunity of hearing to assessee which was mandatory requirement for faceless assessment under section 144B(1)(xvi) was liable to be quashed and set-aside. The matter was remanded to the file of the AO to complete assessment proceedings, by following procedure as contemplated by section144B. (AY.2018-19)

Golden Tobacco Ltd. v. NFACE (2022)442 ITR 204/ 284 Taxman 292 (Bom) (HC)

S. 144B : Faceless Assessment-Natural justice-No show cause notice was issued-Order passed without following mandatory procedure-Order was quashed [Art, 226]

The assessee contended that no draft assessment order was served whereas, the Department argued that the draft assessment order has been issued for which it filed an affidavit in reply as well as sur-rejoinder. However, the same was not accepted by the high court because if any such draft assessment order had been issued, that would have certainly found a mention in the assessment order. Moreover, in the affidavit in reply, it was stated that the draft assessment order under section 143(3) of the Act was issued on 12 April 2021 by the Assessing Officer - Regional E-Assessment Unit instead of the NaFAC which is entrusted with the function. Therefore, the Regional Unit could not have sent any such communication to the assessee. Accordingly, since the assessment order has been issued without following the mandatory procedure prescribed under section 144B, the same is liable to be quashed and set-aside.(AY. 2018-19)

Abacus Real Estate (P.) Ltd. v. Dy. CIT (2022) 284 Taxman 654 (Bom.)(HC)

S. 144B : Faceless Assessment-Draft assessment order and notice-Reply not considered-Request for personal hearing not considered-Non-application of mind by Assessing Officer-Order and consequential demand was set aside-Matter Remanded-Strictures-Assessing Officer was directed to pay Rs 10000 as donation from his personal account to P.M. Care Fund. [S. 156, 270, Art, 226]

Allowing the petition the Court held that there had been total non-application of mind and gross abuse of process by the respondents since assessment order had been passed by simply cutting and pasting draft assessment order and before passing said impugned order, no

personal hearing had been granted and reply of assessee had also not been considered. Accordingly, the assessment order and consequential notices issued under sections 156 and 270A were quashed and set aside and the matter was remanded for de novo consideration. Further, the assessing officer was directed to pay Rs.10,000 as donation from his personal account to P.M. Care Fund.

Milestone Brandcom Pvt. Ltd. v NFAC (2022)441 ITR 470 (Bom)(HC)

S. 144B : Faceless Assessment –Natural justice-Order passed without considering the reply filed by the assessee-Order and consequential demand notice was set aside-Strictures-Officers are not truthful in filing their affidavit-Directed to circulate copy of this order to Commissioner of income-tax (Judicial) Mumbai and also to all Commissioner (Judicial) in the Country-Department to be truthful and accept their mistakes instead of filing false affidavit. [S. 156, Art, 226]

The assessment order was passed on the ground that the assessee did not respond to the showcause notice and draft assessment order. During the writ proceedings, a printout of the e-proceedings response acknowledgement from the department was filed indicating that the reply to show cause notice alongwith various annexures had been submitted. Therefore, it was obvious that the assessing officer had not considered the reply filed by the assessee before passing the assessment order and accordingly, the assessment order and the consequent demand notice issued under section 156 were quashed and set aside. The high court also observed that officers are not truthful in filing their affidavit and directed that the copy of this order be circulated to all Commissioner of income-tax (Judicial) Mumbai and also to all Commissioner (Judicial) in the Country and advised the Department to be truthful and accept its mistakes instead of filing false affidavit.

Zeus Housing Company v. UOI (2022)441 ITR 666 (Bom)(HC)

S. 144B : Faceless Assessment –Natural justice-Failure to issue show cause notice and draft assessment order-Order was quashed and set aside-Directed to pass assessment order by following due procedure as contemplated under section 144B of the Act and giving an opportunity of hearing through video-Conferencing [S. 2(15), 12A,144, 148, 156, 222, 232, Art, 226]

The assessment of the appellant was completed denying the exemption u/s 2(15) of the Act. The assessee challenged the assessment order by filing writ petition and contended that the assessing officer had not issued a notice calling upon the petitioner to show cause as to why the assessment should not be completed as per the draft assessment order. Further, the assessee made an oral request for personal hearing, however, said request was turned down without assigning any reason. Therefore, allowing the petition, the Court set aside the order of assessment and directed to pass assessment order by following due procedure as contemplated under section 144B of the Act and giving an opportunity of hearing through video-Conferencing.(AY. 2018-19)

Goa Industrial Development Corporation (Through its Manging Director) v. NFAC (2022) 442 ITR 212 /285 Taxman 464/ 209 DTR 57/ 324 CTR 129 (Bom)(HC)

S. 144B : Faceless Assessment –Violation of principle of natural justice-Reply filed was not taken in to consideration-Order remanded with the direction to pass the order in accordance with law after giving due opportunity of hearing to the assessee.[S. 143(3), 144B(7)(viii), 144B(7)(xii), Art, 226]

A request for personal hearing was made by the assessee who also filed his reply to the show-cause notice. However, the same was not considered by the assessing officer while passing the assessment order. The high court while disposing the writ held that the assessment order had been passed without granting a proper and meaningful opportunity to the assessee. The high court also held that a mere statement in the affidavit-in-reply that the assessee's response to the show-cause notice did not contain any new or material fact cannot be accepted as such reason is not found in the impugned assessment order. Accordingly, the assessment order was liable to be set aside and proceedings are remanded back to the file of the assessing officer.

Pankaj v. NEAC (2022) 441 ITR 502 / 211 DTR 313/ 325 CTR 567/ 286 Taxman 228 (Bom)(HC)

S. 144B : Faceless Assessment –Accommodation entries-Bogus sales-Penny stock companies-Order passed violation of principle of natural justice-Order was quashed-Notice of reassessment was held to be valid [S. 69, 143(3),147, 148 Art, 226]

The assessment in case of the assessee was sought to be reopened on the allegation of bogus sale of penny stocks and therefore the transactions were not genuine and were merely accommodation entries executed solely to accommodate unaccounted income of assessee. However, the high court while disposing the writ held that there was nothing in the notice under section 148 which could be termed illusory, hypothetical or a matter of conjecture and therefore, notice could not have been set aside in exercise of jurisdiction under article 226 of Constitution. However, the Hon'ble Court also held that since the assessing officer had recorded in the assessment order that there was a stay granted by the high court and yet proceeded to pass the order, therefore, such order being in gross breach of order passed by high court was liable to be quashed and set aside and the matter was remanded back to the file of the assessing officer. Further, the assessing officer was directed to deposit Rs. 25,000 as donation from his/her personal account to PM Cares Fund (AY. 2012-13).

Uttam M Jain (HUF) v. ITO (2022) 285 Taxman 100 / 209 DTR 51/324 CTR 141 (Bom) (HC)

S. 144B : Faceless Assessment –Natural justice-Filed objection with supporting evidence-No infringement of principles of natural justice-Alternative remedy-Writ petition was dismissed. [S. 147, Art. 226]

Assessee challenged order of assessment issued under section 147 on ground that, sufficient opportunity was not granted to him to object to proposed assessment, thereby violating principles of natural justice. Dismissing the petition the Court held that even though, time-limit provided to assessee was very short and bordered on verge of denying an opportunity to effectively explain, still, since assessee utilised opportunity granted and even filed his objection with supporting documents, there was no infringement of principles of natural justice, requiring interference of Court under article 226 of Constitution. In such circumstances, only remedy available to assessee, if any, was to move Appellate Authority challenging order of assessment issued under section 147 of the Act. (SJ)

Shanavas M. v. NFAC (2022) 288 Taxman 550 / 218 DTR 145/329 CTR 549 (Ker)(HC)

S. 144B : Faceless Assessment-Reassessment-Ex parte order-Natural justice-Permitted to put in their objections against assessment order which was to be treated as draft assessment order and after filing of objections Assessing Officer shall proceed to complete assessment.[S. 147, 148, Art, 226]

Assessing Officer sent show cause notice along with draft assessment order to assessee through online mode.Assessee did not open their inbox on account of ill health and as a result of which they could not respond to show cause notice within date fixed for compliance. National Faceless Assessment Centre passed ex parte assessment order. On writ challenging assessment order on ground of violation of principles of natural justice, the Court held that the assessee was to be permitted to put in their objections against assessment order which shall be treated as draft assessment order and after filing of objections Assessing Officer shall proceed to complete assessment. Referred Tin Box Co v. CIT(2001) 249 ITR 216 (SC)

Biki Overseas P. Ltd. v. UOI (2022)) 288 Taxman 578 (Cal)(HC)

S. 144B : Faceless Assessment –Reassessment-Ex-parte order-Notice uploaded only in web portal-Demise of father-Order was set aside and remanded.[S. 147, 148, Art, 226]

Revenue issued a notice under section 148 and same was uploaded in ITBA Portal.Subsequently, an assessment order under section 147 read with sections 144 and 144B was passed. On writ the Court held that since notice was posted only in web portal, which were retrieved by him belatedly due to demise of his father, there was no visible opportunity given to him to respond to same and thus, subsequent assessment order passed by revenue raising a huge demand was ex parte and did not reflect actual taxable income. High Court set aside the matter and remanded. (AY. 2016-17)(SJ))

Chittbabu Dinakaran v. NFAC (20220 288 Taxman 110 (Mad)(HC)

S. 144B : Faceless Assessment-Natural justice-Personal hearing-Video conferencing-Order passed without providing it with an opportunity of hearing by not following prescribed procedure for faceless assessment-Assessment order was quashed-Matter remanded.[S.80P, 144B(7), Art, 226]

Assessee-society, engaged in business of providing credit facilities to its members, had filed its return of income claiming deduction under section 80P. Said return was selected for

scrutiny and a show-cause notice-cum-draft assessment order was issued on assessee. Assessee sought for an opportunity of personal hearing through video conference and requested for directions under section 144A of the Act.The Assessing Officer passed an assessment order without providing desired video conference and thereafter issued a show-cause notice under section 270A to initiate penalty proceedings against assessee. On writ the Court held that no draft assessment along with show cause notice as required under section 144B(1) and section 144B(7) was given to assessee. Since assessment order was passed by Assessing Officer in violation of principles of natural justice without affording an opportunity of personal hearing by not following prescribed procedure laid down as per provisions of section 144B for Faceless assessment, assessment order was quashed. Matter remanded. (AY. 2018-19)

Dediyasan Industrial Co-op. Credit Society Ltd v. ACIT (2022) 288 Taxman 682 (Guj)(HC)

S. 144B : Faceless Assessment-Natural justice-Opportunity of hearing-Addition was made without issuing notice-cum draft assessment order-Order was quashed-Matter remanded [S. 144B(7), Art, 226]

Return of assessee was selected for scrutiny and revenue issued a show-cause notice to assessee, to which assessee furnished a detailed reply requesting to provide opportunity of hearing. Revenue passed final assessment order making addition to returned income of assessee.On writ the Court held that since no notice-cum-draft assessment order was passed under section 144B(1) and 144B(7) and no opportunity of hearing was provided to assessee so as to enable it to give explanation for proposed addition before passing final assessment order, the order being passed in violation of principles of natural justice as well as provisions of section 144B(7) the order was quashed. Matter remanded.

Gujarat State Financial Services Ltd. v. ACIT (2022) 288 Taxman 755 (Guj)(HC)

S. 144B : Faceless Assessment –Natural justice-One day time to give response-Order was set aside and remanded [S. 142(1), Art, 226]

Notice under section 142(1) was issued to assessee on 27-3-2022 giving one day time to assessee to give his response Assessee had requested an adjournment to authorities and sought for seven days time to provide necessary particulars Thereafter, on 31-3-2022 show cause notice was issued giving one hour time to assessee to respond and on same day and as assessee did not file any objections assessment order had been passed. On writ, the Court set aside the assessment order and matter was to be remanded back to revenue to consider assessee's request of affording a reasonable opportunity of hearing. (SJ)

Pichila Jayachandra Reddy v. NFAC (2022) 288 Taxman 95 (Karn)(HC)

S. 144B : Faceless Assessment-Orders passed without affording reasonable time to respond to final show-cause notice-Order set aside and matter remanded to Assessing Officer.[S. 147, 148, Art, 226]

Allowing the petition the Court held that no reasonable time was given to the assessee to respond to the final show-cause notice. Since the contention of limitation could be raised at any point of time it could once again be raised by the assessee before the appellate authority and if it was raised that could also be considered as one of the prime objections with regard to the assessment under section 147 read with section 144B. Matter remanded.(AY.2013-14 to 2015-16)(SJ)

Pesco Beam Environmental Solutions Pvt. Ltd. v. NAFC (2022)448 ITR 122 (Mad)(HC)

S. 144B : Faceless Assessment-Assessment order passed without issuing notice-cum-draft assessment order-Violation of principles of natural justice-Alternate remedy not a bar to writ remedy-Assessment order and consequent demand notice and penalty proceedings set aside-Matter remanded to Assessing Officer.[144, 144B, 147, 156, 271(1)(c), Art, 226]

Held, that there was violation of principles of natural justice and mandatory procedure prescribed under the "Faceless Assessment Scheme" since no prior show-cause notice and draft assessment order had been issued as stipulated in section 144B. The assessment order passed under section 147 read with sections 144 and 144B, the demand notice issued under section 156 and the penalty proceedings initiated under section 271(1)(c) were set aside. The matter was remanded back to the Assessing Officer, who should issue a show-cause notice-cum-draft assessment order to the assessee and thereafter pass a reasoned order in accordance with law.(AY.2015-16)

Jindal Realty Ltd. v. NFAC(2022)447 ITR 302 (Delhi)(HC)

S. 144B : Faceless Assessment-Natural justice-Opportunity of hearing-Technical glitches in web portal-Failure to up load the documents-Order was set aside. [S. 143(3), Art, 226]

Assessee could not upload the documents and reply to show cause notice due to technical glitches in web portal. The AO pass the assessment order. On Writ, allowing the petition, the court held thatsince chance of giving reply by assessee had been denied and revenue had not waited till technical glitches were resolved, assessment order passed was in violation of natural justice and same was set aside (AY. 2018-19)(SJ)
Chandrasekaran Ragupati v. CBDT (2022) 287 Taxman 124 / 13 CCH 317 (Mad.)(HC)

S. 144B : Faceless Assessment-Natural justice-Opportunity of hearing-Technical glitches in web portal-Cash credits-Order set aside [S. 144C, 68, Art, 226]
The AO passed order by making addition u/s 68 of the Act. On writ it was contended thatdue to technical glitch in portal, documents could not be uploaded.Court set aside the order and directed the AO to pass an order after granting a reasonable opportunity of hearing to the Assessee. (AY. 2018-19)
Incap Contract Manufacturing Services (P) Ltd v. ACIT (2022) 287 Taxman 34 / 113 CCH 279 (Karn.)(HC)

S. 144B : Faceless Assessment-No specific demand was raised for personal hearing-No violation of principle of natural justice (audi alteram partem)-Alternative remedy – Pendency of appeal-Writ petition is dismissed [S. 144B(7), Art, 226]
Dismissing the petition the Court held that where assessee did not make any specific express demand for a personal hearing, non-grant of personal hearing by Assessing Officer cannot lead to a case of breach of principles of natural justice (audi alteram partem) thereby enabling assessee to directly approach High Court under article 226 of Constitution especially in face of pending statutory appeal.
Metharam Pinjani v. ITD (2022) 287 Taxman 16/ 211 DTR 185/ 325 CTR 346 (MP)(HC)

S. 144B : Faceless Assessment-Principle of natural justice-Specific request for personal hearing-Order passed without following mandatory provisions-Order set aside-Matter remanded [S. 144B(7)(vii)(ix), Art, 226]

Held that the order without affording opportunity of hearing to assessee, though a specific request was made by assessee for personal hearing in terms of section 144B(7)(vii)(ix), it amounted to violation of principles of natural justice as well as mandatory provisions of section 144B(7)(vii)(ix) and, hence, impugned assessment order was not sustainable in law and same was liable to be set aside. Matter remanded.
Mudar Sudheer v. UOI (2022) 287 Taxman 213 /113 CCH 350(AP)(HC)

S. 144B : Faceless Assessment-Draft assessment-Modification in return-Principle of natural justice-Order set aside.[Art, 226]

Held that the assessee was never served with a draft assessment order or a show-cause notice while proposing to modify the return submitted by the assessee. There was a clear violation of the procedure involved in arriving at the assessment order. Therefore it was not valid when

the decision-making process is contrary to law or is vitiated, the jurisdiction under article 226 of the Constitution of India can be invoked.(AY. 2018-19)

Popular Vehicles and Services Ltd. v. NEAS (2022)446 ITR 374 (Ker) (HC)

S. 144B : Faceless Assessment-Variation in income prejudicial to assessee-Failure to provide requested opportunity of personal hearing-Assessment order and consequent notices set aside [S. 143(3), 144B(7)(vii), 156, 270A, Art, 226]

Allowing the petition the Court held that the provisions of section 144B(7)(vii) applied to the assessee. Therefore, the assessment order passed under section 143(3) read with section 144B, the notice of demand issued under section 156 and the notice issued for initiation of penalty proceedings under section 270A were set aside since there was failure to provide requested opportunity of personal hearing to assessee. The Assessing Officer was at liberty to proceed in accordance with law.(AY. 2018-19)

Omkar Nath v. NFAC (2022) 446 ITR 337 / 287 Taman 108 (Delhi)(HC)

S. 144B : Faceless Assessment-Advance received from clients-For failure to file proper reply the assessment was made by making huge addition-On writ the order was quashed subject to assessee depositing a sum of Rs 5 crores-Directed the assessee to file reply in reassessment proceedings.[S. 69A, 143, Art, 226]

The asseessee is an ITAT agent engaged in booking tickets for its clients received advances from clients for being paid to various airlines. The Assessing Officer added made addition u/s 69A of the Act treating the advances as unexplained investment for failure to respond any of the notices. On writ the assessee contended that two officers handling accounts and tax related issue had left assessee and thus the assessee could not reply to notices. It was also contended that the assessee will have to wound up if order remained. High Court quashed the order subject to assessee depositing a sum of Rs 5 crores-Directed the assessee to file reply in reassessment proceedings (AY. 2018-19)

Hermes I Tickes (P) Ltd v. Dy.CIT (2022) 286 Taxman 18/ 210 DTR 142/ 324 CTR 645 (Mad)(HC)

S. 144B : Faceless Assessment –Cash credits-Failure to afford requested opportunity of hearing-Assessment order quashed and matter remanded [S. 68, 142(1), Art, 226]

The assessee was in construction business. Notices issued under section 142(1) were complied with by the assessee. In respect of its two projects additions under section 68 were proposed. An assessment order was passed without affording the requested opportunity of hearing through video conferencing by the assessee. On a writ allowing the petition the Court held that the assessment order had been passed without affording an opportunity of hearing to the assessee through video conferencing despite specific request. It was not sufficient for the respondent to state that the assessee had not pressed the link for video conferencing in the notice issued under section 142(1) of the Act. Therefore, the order was quashed and matter remitted to the respondent to pass a speaking order on merits and in accordance with law. Matter remanded.(AY.2018-19)

Arun Excello Foundations v. NFAC (2022)445 ITR 642 (Mad) (HC)

S. 144B : Faceless Assessment –Draft Assessment order-Variation in income-Assessee must be given opportunity to be heard. [S. 144B(1)(vi)(b),Art. 226]

Held that the provisions of section 144B required the draft assessment order and the show-cause notice to be furnished to the assessee, eliciting his explanation. The order of assessment had varied the income declared in the return filed by the assessee. However the assessee had not been given an opportunity to be heard. Hence, the order passed under section 144B was not valid. Matter remanded. (AY.2018-19)

Corpus Christi Educational Society v.NAES (2022)443 ITR 318 / 211 DTR 22 / 325 CTR 230 (Ker)(HC)

S. 144B : Faceless Assessment –Violation of principle of natural justice-Extension of time to submit reply to notice was rejected Assessment order set aside. [S. 144B(1)(xvi), Art. 226]

Allowing the petition, the Court held that when the assessee had sought for a further four days' time to respond to the notice citing the reason to gather necessary materials from different sources, the Assessing Officer was bound to give a response, intimating either the rejection or its acceptance of request for time. Such a response was part of the basic requirement of the principles of natural justice. When there was a lack of response, it was only probable that the assessee would have expected his request for adjournment had been accepted. Therefore, the Assessing Officer ought not to have passed the assessment order based on the draft assessment order. There was violation of principles of natural justice and hence the assessment order was set aside. The respondents were directed to consider the objections, if any, of the assessee in response to the show-cause notice within thirty days and accordingly pass appropriate orders.(AY.2018-19)

Eastern Mattresses (P.) Ltd. v. NEAC(2022)443 ITR 278 (Ker) (HC)

S. 144B : Faceless Assessment-Opportunity of personal hearing not granted and reply of assessee is not considered-Violation of principle of natural justice-The word may in section 144B(7)(viii) should be read as must or shall and requirement of giving an assessee a reasonable opportunity of personal hearing is mandatory-Matter remanded [S. 142(1) 143(3 156, Art, 226]

Court held that an assessee had a vested right to personal hearing and it ought to have been given, if the assessee had asked for it. No opportunity of personal hearing was given despite a specific request made by the assessee. The right to personal hearing could not depend upon the facts of each case. Despite "nil" variation proposed in the notice, additions had been made to the assessed income in the draft assessment order and the final assessment order. No notice, as mandatorily required by section 144B(1)(xvi), had been served upon the assessee with respect to the variations made in the income. The draft assessment order had also been issued without considering the reply which was submitted by the assessee in time in response to the notice issued under section 142(1). The classification made by the Department by way of the Circular dated November 23, 2020 issued by the Central Board of Direct Taxes was not founded on intelligible differentia and the differentia had no rational relation to the object of section 144B. The final assessment order and the notice of demand were set aside and the matter was remanded back to the Assessing Officer to issue notice and a draft assessment order and thereafter pass a reasoned order in accordance with law. Matter remanded. The

word may in section 144B(7)(viii) should be read as must or shall and requirement of giving an assessee a reasonable opportunity of personal hearing is mandatory.(AY.2018-19)

Bharat Aluminium Co. Ltd. v. UOI (2022)442 ITR 101/ 285 Taxman 447/ 211 DTR 10/ 325 CTR 252 (Delhi)(HC)

S. 144B : Faceless Assessment-Vested right to a personal hearing-Order was set aside and the matter was to be remanded back to Assessing Officer for a fresh decision. [. 143 (3), 144B(7) (vii), Art, 226]

It is incumbent on the revenue authorities to have given it an opportunity of being heard especially where there is no dispute that the Petitioner did make a request for an opportunity of a personal hearing. Where the reply filed by the revenue only deals with the merits of the assessment itself and does not dispute that the above mandatory procedural requirement was not complied with, it can be assumed that the fact of the procedural breach is not denied. Accordingly, the impugned assessment order was set aside and the matter was remanded to the assessing officer.

Elite Education Society v. Chairman CBDT (2022) 213 DTR 257/ 326 CTR 496 (Orissa)(HC)

S. 144B : Faceless Assessment-Opportunity of hearing-Physical hearing not mandatory Assessee did not opt for virtual hearing even after being advised to do so-Assessment order cannot be challenged [S. 144B(7), Art, 226]

Assessee had sought an opportunity of a personal hearing from the AO. The AO informed the Assessee that there is no provision for a physical hearing and the Assessee was apprised of the process of video conferencing for the purpose of the hearing. The Assessee still insisted on a physical hearing. The AO passed the assessment order along with notice of demand and penalty notice without giving any opportunity of a physical hearing. The Assessee filed a writ petition against such assessment orders and notices. The High Court observed that though S. 144B(7)(vii) requires the opportunity of a personal hearing to be provided, it does not postulate that a hearing should be "physical". The request for a physical hearing by the Assessee is misconceived as a method for the opportunity of hearing was well advised to the Assessee, however, he did not opt for the same. Accordingly, the writ petition was dismissed.(AY. 2014-15)

Gurumukh Ahuja v. NFAC (2022) 214 DTR 65 / 326 CTR 772 / 142 taxmann.com 275 (MP) (HC)

S. 144B : Faceless Assessment-Issue involving question of fact-Order passed after considering the response of assessee-Writ is not maintainable [S. 246A, Art, 226]

Dismissing the petition the Court held that the draft assessment order was passed after considering the response of assessee. The issue raised in the writ petition was with regard to

interpretation of the draft assessment order which could be raised and considered in appeal before the appellate authority. The contentions raised by the assessee required minute examination of the show-cause notice and the response filed by the assessee, which was not permissible in writ jurisdiction. The jurisdiction to interpret the nature of draft assessment order is vested with the appellate authority. Consequently, since the assessee had the alternative efficacious remedy of statutory appeal the writ petition was dismissed.(AY.2018-19)

Core Diagnostics Pvt. Ltd. v NEAC (2022)445 ITR 489 (Delhi)(HC)

S. 144B : Faceless Assessment-Draft assessment order-Failure to issue draft assessment order-Final assessment order not valid. [Art, 226]

The assessee-company was engaged in the business of environmental engineering focusing on treatment of water, municipal sewage and industrial effluents on basis of contracts work in whose case, an assessment order was passed without issue of show cause notice or draft assessment order. Aggrieved, the assessee preferred to file a writ petition which was disposed by the high court which held that the procedure laid down under section 144B needs to be scrupulously followed and if any action is in complete disregard to the statutory provisions, the courts can always overrule the objection of alternative remedy available to the assessee. Accordingly, assessment order is hereby quashed and set aside and the matter is remitted back to the file of the assessing officer for de novo consideration. (AY.2018-19)

Enviro Control Pvt. Ltd. v. NEAC(2022) 445 ITR 119 (Guj)(HC)

S. 144B : Faceless Assessment-Proposed variation in income-Failure to grant personal hearing-Order of assessment and notices of penalty and demand set aside-Matter remanded. 143(3), 144B(7), 156, 270A, 271AAC, Art 226]

A notice-cum-draft assessment order was served upon it proposing to make substantial addition on account of unsecured loans of several lenders. In response, the assessee requested for personal hearing - However, Assessing Officer passed a final assessment order making such proposed additions to income of assessee along with issuance of penalty and demand notice raising a high pitched demand and without affording an opportunity of personal hearing to assessee. Since the order was passed without affording an opportunity of personal hearing to assessee, impugned assessment order was liable to quashed and set aside. Matter was remanded back to the file of the assessing officer.

Expert Capital Services Pvt. Ltd. v NFAC (2022)445 ITR 464 (Delhi)(HC)

S. 144B : Faceless Assessment –Violation of principle of natural justice-Video conference not provided-Assessment order set aside [S. 147, 155, Art, 226]

Allowing the petitions the Court held that since the assessee was unable to participate in the personal hearing through video conference and the orders having been passed by the Assistant Commissioner even before the second date fixed for video conference, the orders were unsustainable and therefore, quashed. The Assistant Commissioner was directed to pass a fresh reassessment order after giving due opportunity of hearing to the assessee through video conferencing.*(*AY.2013-14, 2014-15)

Fifth Field Realtors P Ltd. v. ACIT (2022)445 ITR 494 (Mad)(HC)

S. 144B : Faceless Assessment –Violation of principle of natural justice-Unable to file objections due to lockdown-Existence of alternative remedy-Not bar to exercise of writ jurisdiction where principles of natural justice violated-Order and notice set aside [S. 143(3)) 156, 246A, 271AAC(1), 274, Art, 226]

Allowing the petition, the Court held that the order passed under section 143(3) read with section 144B and the consequent notices of demand and initiation of penalty proceedings were in violation of the principles of natural justice since the assessee was unable to reply to the show-cause notice and draft assessment order due to the covid-19 pandemic situation. The assessee's chartered accountant had confirmed that he was unable to provide the assessee with the login credentials of the Income-tax e-portal and the official records as they were maintained in his office and that he was unable to access them due to the covid-19 pandemic situation. Therefore, the assessment order and the notices for the assessment year 2018-19 were set aside with the direction that the assessee was to file its reply and thereafter the NaFAC was to pass a fresh assessment order in accordance with law. It was also held that existence of an alternative remedy under section 246A of the Income-tax Act, 1961, is not a bar to the exercise of the writ jurisdiction of the High Court under article 226 if the writ petition is filed for enforcement of a fundamental right protected by Part III of the Constitution of India or where there has been a violation of the principles of natural justice or where the order or the proceedings are wholly without jurisdiction or when the vires of a legislation are challenged.(AY.2018-19)

Ketan Ribbons Pvt. Ltd. v. NFAC(2022)445 ITR 11 (Delhi)(HC)

S. 144B : Faceless Assessment –Draft assessment order-Violation of natural justice-Two days time was granted-Personal hearing not granted-Order of assessment is not valid-Matter remanded. [S. 114B(1)(xvi), Art, 226]

Allowing the petition, the Court held that the notice along with the draft assessment order was given to the assessee on April 4, 2021 and the response thereto was given within two days by the assessee in the mode as prescribed under the law. The assessee also filed a further reply to the notice on April 8, 2021 as well as on April 15, 2021 in continuation of the first reply of April 6, 2021. Having recognised the fact that it had received the request of April 7, 2021, there was no earthly reason for the Department to have ignored it and not to afford the opportunity of hearing. The subsequent guidelines for personal hearing through video conferencing recommending dos and don'ts could not be taken into consideration. What presently would guide the case of the assessee were the "frequently asked questions" available for seeking video conferencing and seeking the adjournment of the video conferencing. There had been a violation when the modified assessment order was to be passed by making an addition of nearly Rs. 107 crores and when a specific request had gone on the third day of issuance of notice from the assessee and when the time for framing the assessment was not getting barred, non-availment of the opportunity of personal hearing surely had resulted in the violation of the principles of natural justice and therefore, the order of assessment was not valid. Matter remanded.(AY.2018-19)

Agrawal JMC Joint Venture v. ITO (2022) 444 ITR 470 / 213 DTR 260/ 326 CTR 499 (Guj)(HC)

S. 144B : Faceless Assessment –Request for personal hearing-Video Conferencing Facility proving to be inadequate-Assessment order not valid-Directed to hear through Video conference on fixing the time.[S. 143(3), 144B(7)(vii), Art, 226]

Allowing the petition, the Court observed that despite video conferencing facility having been granted, the time granted was less than 24 hours and the non-response initially and disruption which eventually resulted in sudden snapping of the link was never thereafter responded to, even when request was made on the part of the assessee for permitting the hearing which had remained to be concluded. The video itself in no uncertain terms showed that there was a violation of the need to provide opportunity of hearing. There were technical glitches a couple of times and the opportunity which had been given was surely insufficient and incomplete. This surely was not in consonance with the objective with which the Legislature had brought this faceless assessment regime and therefore, the order of assessment was not valid. Accordingly, the high court directed the matter to be re-heard through video conference.(AY. 2018-19)

Dr. K. R. Shroff Foundation v. ITO (2022) 444 ITR 354 / 213 DTR 289/ 326 DTR 289 (Guj)(HC)

S. 144B : Faceless Assessment-Variation in income-Objections pending disposal before Dispute Resolution Panel-Assessment order set aside [S. 143(3) 144C(3), Art, 226].

In view of the CBDT Circular No. 8 of 2021 dated April 30, 2021 ([2021] 433 ITR (St.) 405), which had extended the time limit for filing of such objections up till May 31, 2021, the objections filed by the assessee before the Dispute Resolution Panel on May 27, 2021 were within the prescribed time and were being heard on the merits by the Dispute Resolution Panel. Therefore, in view of the scheme of section 144C, the final assessment order was set aside and the National E-Assessment Centre was to proceed with the assessment complying with the procedures stipulated in section 144C. (AY. 2017-18)

Fiberhome India Pvt. Ltd. v. NEAC (2022) 444 ITR 237 (Delhi)(HC)

S. 144B : Faceless Assessment-Variation in draft assessment order-Assessee must be given opportunity to be heard. [S. 144B(1)(xvi)(b),Art, 226]

Disposing the writ, the Court held that nothing had been brought on record by the Assessing Officer to suggest that the show-cause notice along with draft assessment order was served upon the assessee. The assessment order showed that there were variations from the return filed by the assessee as regards disallowance. Further, the final assessment order was not made in accordance with the procedure envisaged under section 144B(1)(xvi)(b) and therefore, the assessment order is not valid and liable to be quashed and set aside. The assessing officer shall pass a draft assessment order and thereafter forward the same to the assessee along with the show cause notice in accordance with the provisions of section 144B. (AY. 2018-19)

Sardar Co-Operative Credit Society Ltd. v. ACIT (2022) 444 ITR 23 (Guj) (HC)

S. 144B : Faceless Assessment –Violation of Principles of natural justice-Order set aside-Matter remanded. [S. 143(3) 156, Art, 226]

Passing the assessment before the time granted to respond to the notice concluded is not sustainable and is in violation of principles of natural justice. The time limit to respond to the notice begins from the date of receipt of the notice and expires on the last day to respond and therefore, an assessment order cannot be issued in such intervening period. Accordingly, the assessment order was liable to be quashed and set aside. The issue was remanded to the assessing officer for granting fresh opportunity to the assessee for filing reply or objection to the draft assessment order-cum-notice and thereafter take a decision.

Pradip Kumar Saha v. UOI (2022)442 ITR 231/ 210 DTR 190/ 325 CTR 110 (Cal) (HC)

S. 144B : Faceless Assessment-Violation of principle of natural justice-Adequate opportunity of hearing not given-Order of assessment is not valid-Order is set aside. [Art, 226]

Where records showed that Show Cause Notice was issued to assessee and was responded to along with an application for personal hearing, assessment order stating that neither a reply had been filed nor an adjournment had been sought by assessee cannot be justified and is liable to be set aside on ground of non-adherence to statutorily ingrained natural justice principles and remanded back for de novo adjudication. (AY 2018-19)

Estra Enterprises Pvt. Ltd. v NFACA (2022)442 ITR 112 (Mad) (HC)

S. 144B : Faceless Assessment-Show cause notice-One day time was given-Personal hearing was not requested-Writ dismissed due to availability of alternate statutory remedy [S. 143(3),246A, Art, 226]

Revenue issued a show cause notice against assessee proposing certain variations to returned income of assessee and passed an assessment order making such variations to income of assessee. Assessee filed writ petition against said assessment order. Court held that since none of exceptions to alternate remedy rule (i.e. breach of fundamental rights, violation of principles of natural justice, an excess of jurisdiction or a challenge to vires of statute or delegated legislation) were attracted in instant case, assessee was to be relegated to alternate remedy of statutory appeal under section 246A. Writ petition is dismissed. (AY 2018-19)

British Agro Products (India)(P) Ltd v. ACIT (2022) 285 Taxman 141 (Mad.) (HC)

S. 144B : Faceless Assessment-Procedure prescribed not followed-Cash credits –Firm-Partner-Source of the investors of capital and amount received need not be established-Matter remanded. [S.68,69, 143 (3), 144B(9), Art, 226]

The assessee is a firm engaged in the business of real estate development. Assessing officer brought to tax under section68, the sums received from the partners as capital contribution alleging that the assessee was not able to prove the creditworthiness of the partners and also the identity, genuineness and creditworthiness of the other parties from whom funds were received by the partners for being introduced in the firm as capital. On writ, the Court observed that the assessment order was nothing but an exact reproduction of the draft assessment order. It held that all that had been done by the assessing officer was to express doubts as regards the genuineness of the entries. The relevant aspects as pointed out by the assessee had not been considered from a proper perspective and there had not been any

discussion about those in the assessment order. Accordingly, the order was liable to be set aside and the matter remanded back.

Darshan Enterprise v. ACIT (2022)441 ITR 473/ 209 DTR 417/ 324 CTR 469/ 286 Taxman 75 (Guj)(HC)

S. 144B : Faceless Assessment –Draft assessment order –Violation of principle of natural justice-Failure to issue notice-Order not valid [143(3), 144(2), Art, 226]

Assessee challenged assessment order passed under section 144B on ground that same was passed without issuing any show cause notice and draft assessment order. The high court noted that draft assessment order
which was claimed to have been served upon assessee was missing on Web Portal of Income Tax Department. Accordingly it held that since there was specific requirement for service of notice and order by electronic mode and in absence of placing any proof of virtual exchange or authenticated copy of service to assessee, it could not be said that opportunity of furnishing documents and hearing was provided to assessee. Further, where at earlier stage on account of issuance of notice under section 143(2), the assessee was given opportunity of hearing, the same would not eventually culminate into furnishing of final assessment order without service of prior notice along with draft assessment order. Therefore, impugned order passed without following mandate given by statute under section144B was to be quashed and set aside with direction that notice-cum-draft assessment order be issued and the assessee should be provided with an opportunity of being heard. (AY.2018-19)

Gandhi Realty (India) Pvt. Ltd. v. ACIT (2022)441 ITR 316/ 214 DTR 283 (Guj) (HC)

S. 144B : Faceless Assessment-Draft assessment order-Final notice with draft assessment order not served-Assessment order not valid. [S. 144B(1)(xvi), 144B(xxii), Art, 226]

Where the assessing officer passed the final assessment order after servingthe draft assessment order without fixing any date for furnishing the reply and a final show-cause notice allowing the opportunity of hearing to the assessee, the said order was in contravention of the mandatory provisions ofsection 144B(1)(xvi) and 144B(1)(xxii) and is therefore liable to be quashed and set aside to the file of the assessing officer.

Idex India Pvt. Ltd. v. ACIT (2022)441 ITR 616/285 Taxman 400 (Guj) (HC)

S. 144B : Faceless Assessment –Natural justice-Merely reproducing content of assessees replies to notices is not sufficient-Matter remanded for passing order [Art, 226]

The Assessing Officer passed the order by merely reproducing the replies of the assessees to the notices with one addition simply stating that the replies of the assessees were not satisfactory. On writ the Court held that the assessment orders merely reproduced the content of the replies of the assessees to the notices, and there was no discussion to support the conclusion in the assessment orders. Only a conclusion had been given in the assessment orders that the replies filed by the assessees to the notices were not satisfactory. This was not sufficient. The orders passed were non-speaking orders and therefore were quashed and the matter was remanded for fresh consideration and to pass speaking order. (AY2019-20)

Vellaian Selvaraj v. ACIT (2022)441 ITR 644/ 213 DTR 309 / 326 DTR 550 (Mad) (HC)

Kumaravel Muthiah Mallika v. ACIT (2022)441 ITR 644 / 213 DTR 309 / 326 DTR 550 (Mad) (HC)

S. 144B : Faceless Assessment-Issue of notice and draft assessment prior to final assessment order-Violation of principle of natural justice-Order set aside. [S. 143(3), 270A]

On writ, court held that faceless assessment scheme mandatorily provides for issuance of a prior show cause notice and draft assessment order before issuing the final assessment order. Therefore, impugned assessment order passed without prior show cause notice as well as draft assessment order is a violation of principles of natural justice as well as mandatory procedure prescribed under Faceless Assessment Scheme. Accordingly, impugned assessment order set aside and the matter is remanded back.

Pardesi Developers Pvt. Ltd. v. NAFAC(2022) 441 ITR 696 (Delhi) (HC)

S. 144B : Faceless Assessment –Natural justice-Application to file further time to file reply was not considered-Order was set aside. [S.. 143(3), Art, 226]

Notice containing draft assessment order and directing for a reply to be filed was issued to the assessee. However, due to imposition of lockdown and due to the assessee's accountant suffering from Covid-19, assessee applied for adjournment which was declined and an assessment order was passed without taking cognizance of the adjournment application. Accordingly, impugned order was set aside and matter remanded for passing fresh order. (AY. 2018-19)

Preethi Himachal & Co v.UOI (2022) 285 Taxman 518/ 219 DTR 365/ 329 CTR 538 (HP) (HC)

S. 144B : Faceless Assessment-Violation of principle of natural justice-Sufficient opportunity was not given-Order of assessment is set aside [S. 144B(1)(xxii), Art, 226]

Allowing the petition the Court held that unless sufficient opportunity is granted to assessee to respond which is mandated by explicit provisions of section 144(B)(1)(xxii), assessee will be put to prejudice. Since show cause notice issued to assessee failed to provide sufficient opportunity to him to respond, violation of principles of natural justice was manifest and accordingly, order of assessment was to be set aside and matter remanded back to the assessing officer. (AY. 2015-16)

Sree Narayana Dharma Sabha Sreyas. v. ACIT *(*2022) 285 Taxman 516 (Ker) (HC)

S. 144B : Faceless Assessment-Personal hearing-Order passed without giving an opportunity of personal hearing-Order was set aside-Directed to pass reasoned order in accordance with law.[S. 143(3), 143(3A), 143(3B), 144B(7), Art, 226]

Allowing the petition the Court held that the assessment order had been passed without affording an opportunity of being heard though assessee had requested for a personal hearing and since section 144B(7) provides for a personal hearing, impugned assessment order was

set aside and matter was remanded with direction to pass reasoned order in accordance with law. (AY. 2018-19)

Dar Housing Ltd. v. NEAC (2022) 441 ITR 685 / 284 Taxman 55 / (Delhi)(HC)

S. 144B : Faceless Assessment-Personal hearing –Opportunity of personal hearing was not provided-Order was set aside and remanded to Assessing Officer for adjudication afresh. [S. 144B(7), Art, 226]

Allowing the petition the Court held that it was incumbent upon Assessing Officer to have granted personal hearing through video conferencing before passing final assessment order. Since Assessing Officer did not grant personal hearing, impugned assessment order was to be set aside and matter was to be remanded back to Assessing Officer for adjudication afresh. (AY. 2018-19)

Devanshu Infin Ltd. v. NEAC (2022) 284 Taxman 36 (Delhi)(HC)

S. 144B : Faceless Assessment –Opportunity of hearing-Violation of principle of natural justice-Order was set aside-Directed to pass reasoned order in accordance with law.[S. 144B(7)), Art, 226]

Allowing the petition the Court held that 144B(7) mandatorily provides for
issuance of a prior show cause notice and draft assessment order before issuing final assessment order and also provides for an opportunity of personal hearing, if requested, by assessee. Therefore, where the assessing officer had proceeded to pass impugned assessment order without dealing with request of assessee for adjournment, there had been a violation of principles of natural justice. Accordingly, impugned assessment order was set aside and matter was to be remanded back with a direction to grant an opportunity of being heard and thereafter pass a reasoned order in accordance with law(AY. 1995-96)

Sudev Industries Ltd. v. NFAC (2022) 284 Taxman 214 (Delhi)(HC)

S. 144B : Faceless assessment-Personal hearing-Series of adjournments were granted on prayer of petitioner from time-to-time and petitioner did not comply with many notices-Petition was dismissed.[Art, 226]

Petitioner had challenged assessment order on ground of violation of principle of natural justice by department by not giving adequate and effective opportunity of hearing to petitioner. Dismissing the petition the Court held that from record that series of adjournments were granted on prayer of petitioner from time-to-time and petitioner did not comply with many notices and sometime in response to some of notices it had furnished material evidence and documents in support of its case before Assessing Officer and, thus, sufficient opportunities of hearing were given to petitioner hence there was no violation of principles of natural justice. Petition was dismissed.

Unisource Hydro Carbon Services (P.) Ltd. v. UOI (2022)284 Taxman 21 (Cal) (HC)

S. 144B : Faceless Assessment-Violation of principle of natural justice-Request for adjournment to notice and draft assessment order-Neither rejected nor duly intimated-Order was set aside [S. 143(3), Art, 226]

Allowing the petition the Court held that there was violation of the principles of natural justice since the assessee's request for adjournment was neither rejected nor was the assessee duly intimated. Accordingly, the assessment order was liable to be set aside with the direction that the assessee should comply with the directions in the notice and upon receipt of the reply, the assessing officer was to give an opportunity of hearing to the assessee.

Magick Woods Exports P. Ltd. v. Add. CIT (2022) 440 ITR 607 (Mad) (HC)

S. 144B : Faceless Assessment-Violation of principle of natural justice-Order passed without show cause notice and draft assessment order –.Directed to file an affidavit. [S. 143(3), 144B(9), Art, 226]

Assessment order had been passed in case of assessee by NFAC without issuing a Show Cause Notice and a draft assessment order which was mandated under section 144B(1)(xvi)(b) and therefore, in view of section 144B(9), any assessment order not made in accordance with the procedure laid down in section 144B would be non-est. Further, assessee's reply was not considered and its request for personal hearing was not acceded to. Accordingly, Principal Commissioner was directed to examine whether NFAC would withdraw the final assessment order passed in violation of principles of natural justice without issuing Show Cause Notice and draft assessment order. (AY.2018-19)

Rmsi Private Limited v NFAC(2022) 440 ITR 245 /285 Taxman 708 (Delhi) (HC)

S. 144B : Faceless Assessment- Non-Resident-Draft assessment order was served-Objections were considered-Writ is not maintainable [S. 246A, Art, 226]

Dismissing the petition, the Court held that notice under section 144B of the Act has been issued and the assessee has replied. Thereafter, a show-cause notice under section 144B was issued and this contained the draft assessment order. Thereafter, the assessee sent its objections and ultimately, the order had been passed. The assessee had not raised the point that the time granted was not reasonable, adequate or ample. Court held that on facts this was not a fit case for interference in writ jurisdiction and the assessee had to be relegated to the alternative remedy of statutory appeal.The court directed that the appellate authority shall consider the appeal on its own merits and in accordance with law dehors any observation made in this order. If the assessee sought exclusion of the time spent in the writ petition that could be considered by the appellate authority on its own merits and in accordance with law. (AY.2018-19)

Greenstar Fertilizers Ltd. v. Add. CIT (2022) 440 ITR 140/ 209 DTR 248/ 324 CTR 426/ 285 Taman 56 (Mad) (HC)

144B:Faceless Assessment –Mandatory condition-Assessment order passed without passing the draft assessment order-Assessing Officer was directed to pass a fresh order, after complying with requirement of section 144B.[S. 143 (3), Art, 226]

Where the assessment order was passed without first issuing a show cause notice on the assessee as provided for in section 144B, such an assessment order was bad in law and was to be set aside. However, opportunity was to be given to the Assessing Officer to pass a fresh order after complying with the requirements of section 144B. (AY. 2017-18)

Sribasta Kumar Swain v.UOI (2022) 440 ITR 545 (Orissa) (HC)

S. 144B : Faceless Assessment-Contention of denial of opportunity of personal hearing requested by Assessee-Assessment order stayed.[Art, 226]

Writ petition contending that assessee's grievance against the assessment made under section 144B could be examined by the High Court without insisting upon filing of an appeal. Accordingly, it directed issue notice of the writ petition and stay application and stayed the effect and operation of the assessment order in the meanwhile.

Inder Prasad Mathura Lal v. NEAC (2022) 440 ITR 73 (Raj) (HC)

S. 144B : Faceless Assessment –Personal hearing through video conferencing not granted-Matter was to be remanded to Commissioner for de novo adjudication. [S. 143(3) Rule, 12]

As per rule 12 of National Faceless Assessment Scheme, 2021which came into effect from 28-12-2021, personal hearing is to be granted invariably through video conferencing in all cases where request for personal hearing is made. The amendment being curative amendment and was to be treated as retrospective in nature. Therefore, when assessee had requested personal hearing through Video Conferencing prior to 28-12-2021 and the same was denied on ground that granting of opportunity through VC was not mandatory, since the amendment is retrospective in nature, the assessee was to be given an opportunity of personal hearing and matterwas to be remanded for de novo adjudication. (AY. 2010-11)

Bank of India. v. ACIT (2022) 196 ITD 1/ 218 TTJ 724/ 215 DTR 385 (Mum) (Trib.)

S. 144C : Reference to dispute resolution panel-Mandatory proceedings-Draft assessment order proposing variations to returned income must be submitted to DRP--Order on remand must also be submitted to DRP-Not curable defects [S. 92CA, 144C(2), 253(1)(d), 292B]

Dismissing the appeal of the Revenue the Court held that the requirement of redoing the procedure under section 144C upon remand to the assessing officer is mandatory and omission in following the procedure is an incurable defect. The filing of appeal before the Commissioner (Appeals) could not be treated as a waiver of an objection available to the assessee in this behalf under section 144C. Section 253(1)(d) provides for appeal only when order has been made under section 143(3) read with section 144C of the Act. (AY.2009-10)

PCIT v. Appollo Tyres Ltd. (2022)449 ITR 398 (Ker)(HC)

S. 144C : Reference to dispute resolution panel-Draft assessment order-Order passed when the matter was pending before DRP-Order arbitrary, illegal and without jurisdiction. [Art, 226]

Assessee filed objections to Draft Assessment Order before Dispute Resolution Panel within prescribed period. Assessee could not intimate Assessing Officer about filing of said

objections in view of Covid-19 exigency, however, when Assessing Officer issued notice to assessee seeking clarification as to whether any objections before Dispute Resolution Panel were filed or not, assessee sent a reply intimating about fact of filing objections before Dispute Resolution Panel. Assessee also intimated jurisdictional Assessing Officer by way of e-mail and physical submission.The Assessing Officer passed the order. On writ the Court held that the assessment order passed by Assessing Officer without awaiting directions from Dispute Resolution Panel, before whom matter was pending pursuant to assessee filing its objections within prescribed period, was clearly arbitrary, illegal and without jurisdiction or authority of law.

TT Steel Service India Pvt Ltd. (Rep, by Mr.Junichi Takamasu) v Addl.CIT(2022) 209 DTR 408 / 325 CTR 113 / 137 taxmann. com 151 (Karn)(HC)

S. 144C: Reference to dispute resolution panel-Remand proceedings-Draft assessment order has not been issued before the final assessment order is passed-The order set aside. [S. 92CA, 254(1), Art. 226]

Certain transfer pricing adjustments were made in case of the assessee in which was set aside by the ITAT. However, the order giving effect was passed without passing the draft assessment order against which a writ was preferred. The high court held that section 144C(1) mandates passing of draft assessment order in case of 'eligible assessees'. Even in partial remand proceedings from the Tribunal, it is averred the assessing officer is obliged to pass the draft assessment order. Accordingly the order was quashed and set aside.(WP No. 451 of 2022, dt.18.04.22) (AY. 2006-2007)

ExxonMobil Company Private Limited v. DCIT (Bom.)(HC) (UR)

S. 144C: Reference to dispute resolution panel-Mandatory-Failure to follow the procedure under Section 144C(1) of the Act would be a jurisdictional error and not merely procedural error or a mere irregularity-Order of assessment was quashed and set aside. [S. 292B, Art, 226]

The order was passed without following the procedure under section 144C(1) of the Act. On writ the Court relied on the SHL (India) Pvt Ltd v.. DCIT, (. 2021) 438 ITR 317 (Bom)(HC) held that the requirement under Section 144C(1) of the Act to first pass the draft assessment order and to provide a copy thereof to the assessee is mandatory requirement that gave substantive right to the assessee to object to any variation, that is prejudicial to the assessee. Depriving petitioner of this valuable right to raise objection before DRP would be denial of substantive right to the assessee.Order of assessment was quashed and set aside**. (WP No. 1802 of 2021, dt. 22.12.21)**

Shell India Market Pvt. Ltd. v. ACIT (Bom.)(HC)(UR)
S. 144C : Reference to dispute resolution panel-Draft assessment order-Limitation-No objection raised by assessee-Assessment order passed on 27-9-2021-Barred by limitation [Art. 226]

Allowing the petition, the Court held that the assessing had passed the draft assessment order under section 143(3) read with section 144C of the Act proposing to make an addition. By letter dated May 15, 2021, forwarded to him by e-mail on May 17, 2021, the assessee informed him that it would not be opting for the Dispute Resolution Panel route and instead would pursue the normal appellate channel. The communication was received by the Deputy Commissioner on May 17, 2021 and therefore, the time limit under sub-section (4) of section 144C of the Act would expire on June 30, 2021. Even if the submission of the Deputy Commissioner that e-mail dated May 17, 2021 was not uploaded in the Income-tax Business Application system were accepted and that the e-mail had to be ignored, still, the draft order having been received by the assessee on April 19, 2021, the thirty day period provided under sub-section (2) of section 144C of the Act would have expired on May 18, 2021 which would mean the time limit under sub-section (4) of the Act expired on June 30, 2021. On facts the order had been passed on September 27, 2021. Neither Circular No. 8 of 2021 nor Notification No. 74 of 2021 dated June 25, 2021 ([2021] 435 ITR (St.) 24) or press release dated June 25, 2021 would help the Deputy Commissioner. The assessment order dated September 27, 2021 had been passed beyond prescribed time limit. Order was quashed.(AY.2018-19)

Renaissance Services Bv v. Dy. CIT (IT) (2022)445 ITR 27/ 213 DTR 313/326 CTR 637/ 288 Taxman 244 (Bom)(HC)

S. 144C : Reference to dispute resolution panel-Faceless Assessment-Limitation period for completion of Assessment by Assessing Officer on receipt of order of Dispute Resolution Panel against draft Assessment order-Not falling within period from March 20, 2020 to December 31, 2020 as stipulated under Section 3(1) of Taxation and other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020-Assessment order barred by time and consequent demand and penalty notices set aside.[143(3), 144B, 144C(1), 144C(5), 144C(13), 156, 270A, 274 Art, 226]

A draft assessment order with certain transfer pricing adjustments was challenged before the Dispute Resolution Panel whose directions were passed on March 20, 2021. Subsequently, the final assessment order was passed on September 30, 2021. The same was challenged by the assessee as being time barred by way of a writ. The Court held that since the order of the Dispute Resolution Panel was received by the Assessing Officer only on March 20, 2021, the assessee did not fall under sub-section (1) of section 3 of the 2020 Act as the time-limit for completion of assessment did not fall within the period from March 20, 2020 to December 31, 2020. Therefore, Notification No. 20 of 2021 dated March 31, 2021 was not applicable to the assessee since it provided that if the time-limit to complete the assessment under section 144C(13) expired on any date up to March 31, 2021, the date for completion was extended up to April 30, 2021.That since the expiry of the time-limit for completion of assessment or for passing the order in the assessee's case under section 144C(13) of the Act on April 30, 2021 was not due to an earlier extension of time-limit by an earlier notification but was on account of the fact that the directions were issued by the Dispute Resolution Panel on March 20, 2021, Notification No.38 of 2021 dated April 27, 2021 was not applicable to the assessee.That there was no specific reference to the time-limit under section 144C(13) in

Notification No. 74 of 2021 dated June 25, 2021 and there was no extension of time-limit for completion of assessment or passing of any order under section 144C(13). Since the time-limit in the assessee's case had not been extended by earlier notifications, this notification was not applicable to the assessee. Hence, there was no extension of time-limit to September 30, 2021 to pass the order under section 144C(13) against the assessee. That the assessment order dated September 30, 2021 passed under section 143(3) read with sections 144C(13) and 144B for the AY. 2016-17, the consequent demand notice under section 156 and penalty notice under section 274 read with section 270A were quashed and set aside. The undertaking by the assessee to withdraw the statutory appeal filed against the assessment order was accepted. (AY. 2016-17)

Shell India Markets Pvt. Ltd. v. ITO (2022)443 ITR 366/ 214 DTR 153 / 327 CTR 69 (Bom) (HC)

S. 144C : Reference to dispute resolution panel-Draft assessment order-Depreciation-Binding precedent-Decision of Supreme Court binding on all Courts and all authorities-Appellate Tribunal-Decision of Tribunal is binding on all authorities [S. 32, 144C,(8), 254(1), Art, 226]

The assessee challenged the draft assessment order on ground that Revenue had erred in seeking to disallow depreciation on good will overlooking the order of Tribunal in assessee's own case on the ground that decision of Tribunal was not accepted by Revenue and appeal is pending before High Court. The assessee filed writ petition. Allowing the petition the Court held that**,** Revenue had erred in seeking to disallow depreciation on goodwill by completely overlooking decision of Tribunal in assessee's own case, stand taken by revenue that said decision had been appealed against and was not binding could not be accepted as unless there was a stay, order decision of Tribunal would be binding on all income-tax authorities within its jurisdiction. Article 141 of the Constitution of India says that the law declared by the Supreme Court shall be binding on all courts within the territory of India. Therefore, it is the bounden duty of all authorities whether administrative or quasi judicial or judicial to follow the law declared by the Supreme Court.Principles of judicial discipline require that the orders of the higher appellate authorities should be followed unreservedly by the subordinate authorities. Unless there is a stay, the order or decision of the jurisdictional Tribunal is binding on all Income-tax authorities within its jurisdiction.

Mylan Laboratories Ltd. v. NFAC (2022)446 ITR 734 / 287 Taxman 40 / 220 DTR 105/ 329 DTR 502 (Telangana) (HC)

S. 144C : Reference to dispute resolution panel-Limitation-Notice by Dispute Resolution Panel four years after direction by Tribunal-Barred by limitation-High Court has power to quash show-cause notice-Decisions of single judge affirmed [S. 92C, 92CA, 144C(13), 153, 254 (1), Art, 226]

Section 144C of the Act is a self-contained code of assessment and time limits are inbuilt each stage of the procedure contemplated. However this does not lead to the conclusion that overall time limits have been eschewed in the process. The Statute having set time limits at every step, there is no reason to take a stand that proceedings on remand to the DRP may be done at leisure sans the imposition of any time limit at all. The non-obstante clause in Section 144C would not exclude the operation of Section 153 as a whole since it implies that irrespective of availability of larger time to conclude the proceedings, final orders are to be passed within time limit prescribed in Section 153 of the Act. (AY.2009-10, 2010-11)

CIT. v. Roca Bathroom Products P. Ltd (2022) 445 ITR 537 / 216 DTR 323 / 328 CTR 14 (Mad)(HC)

Dy. CIT v. Freight Systems (India) P. Ltd. (2022) 445 ITR 537/ 216 DTR 323 / 328 CTR 14 (Mad)(HC)

Editorial : Decisions of single judge affirmed, CIT. v. Roca Bathroom Products P. Ltd (2021) 432 ITR 192 (Mad)(HC)/ Dy. CIT v. Freight Systems (India) P. Ltd. (2021) 18 ITR-OL 468 (Mad)(HC)

S. 144C : Reference to dispute resolution panel-Limitation-Limitation prescribed by Section 153 Applies-Direction issued to Deputy Commissioner to take up the entire matter of the assessee for consideration at the earliest and take an appropriate decision in accordance with law, within a period of four weeks from the date of receipt of this order and pass an appropriate order in writing.[S. 153, Art, 226]

In the assessee's case, the Tribunal had set aside the order of the Dispute Resolution Panel and the assessment order and the matter was remanded with a direction to pass a fresh assessment order in accordance with law after receiving fresh appropriate directions from the Dispute Resolution Panel. However, no directions were passed even after 2 years. Accordingly, the High Court directed the assessing officer to take up the entire matter for consideration at the earliest and take an appropriate decision in accordance with law, within a period of four weeks from the date of receipt of this order and pass an appropriate order in writing. (AY. 2010-11)

Sabic Innovative Plastics India Pvt. Ltd. v.Dy. CIT (2022) 443 ITR 310/ 214 DTR 168/ 327 CTR 312 (Guj)(HC)

S. 144C : Reference to dispute resolution panel-Assessment Proceedings on remand-Procedure must be followed-Order is held to be not valid. [S. 92CA(4)]

Provisions of section 144C being mandatory in nature, the assessing officer is bound to pass a draft order prior to passing the final assessment order even in case of remand proceedings. Accordingly, final assessment order without first passing a draft assessment order was set aside with a direction to pass a draft assessment order within a period of 3 months from the date of receipt of a copy of the order. (AY.2010-11 and 2011-12)

Volex Interconnect (India) Pvt. Ltd. v. ACIT (2022)442 ITR 425 (Mad) (HC)

S. 144C : Reference to dispute resolution panel-Submission of assessee not considered-Draft assessment order is set aside with the direction to complete the assessment after considering the response of assessee. [Art, 226]

Prior to passing draft order under section 144C a show cause notice was issued to assessee on 25-9-2021 asking to submit their response before 27-9-2021. However, 25-9-2021 being Saturday and 26-9-2021 being Sunday assessee noticed said SCN only on 27-9-2021 and sent their reply on 28-9-2021. However impugned order under section 144C was passed on 28-9-2021 on basis that no reply was given by assessee. On writ the court held that since response submitted by assessee on 28-9-2021 had not been taken into account by revenue before

making impugned draft order, said order was to be set aside and revenue was to be directed to proceed further from said show cause notice stage and complete assessment considering response of assessee. (AY 2018-19)

BASF Catalysts India (P) Ltd v. Addl CIT (2022) 285 Taxman 431 (Mad.)(HC)

S. 144C : Reference to dispute resolution panel-Order passed without waiting for expiry of time period provided-Order was quashed-Directed to pass a fresh assessment. [S. 144B (1) (xvi)(b), Art, 226]

The Assessing Officer passed the order without waiting for expiry of time period provided to assessee to file a reply to show cause notice passed and passed draft assessment order under section 144C of the Act. On writ, the high court allowing the petition held that the draft assessment order passed in violation of principle of natural justice as well as section 144B(1)(xvi)(b) of the Act and therefore liable to be quashed and set aside with the direction to the Assessing Officer to pass a fresh assessment order in accordance with law.

Clarks Future Footwear Centre v. NFAC (2022) 284 Taxman 676 (Delhi)(HC).

S. 144C : Reference to dispute resolution panel-Order passed without awaiting directions of DRP under section 144C(5) of the Act-Order was set aside [S. 143(3), Art, 226]

Allowing the petition, the high court held that an assessment order passed before receipt of the DRP direction under section 144C(5) is liable to be quashed and set aside with a direction to pass the final assessment after considering the DRP directions and in accordance with law. (AY. 2017-18)

Ford India (P) Ltd v. ITO (2022) 284 Taxman 396 (Mad)(HC)

S. 144C : Reference to dispute resolution panel-Foreign Company-Draft Assessment order was not passed-DTAA-India-Singapore-Demand raised was stayed. [S. 143(3), Art, 226]

Disposing the writ, the high court held that in case of the assessee being a Singapore based company which was denied benefit of exemption under India-Singapore DTAA, the final assessment order passed without passing a draft assessment order is prejudicial to interest of the assessee since it infringes upon the vested right of filing objections before DRP. Accordingly, it was directed that the final assessment order shall be treated as a draft assessment order. Consequently, liberty granted to the assessee to file objections against the draft assessment order with DRP and till objections were disposed of by DRP, demand imposed by impugned order shall remain stayed. (AY.2019-20)

Criteo Singapore Pte. Ltd. v. CIT (IT) (2022) 440 ITR 242 (Delhi)(HC)

S. 144C : Reference to dispute resolution panel -Transfer pricing- Assessing Officer to pass final order from end of month in which direction received from Dispute Resolution Panel - Order not barred by limitation.[S. 92C, 144C(13)]

Held, that the final assessment order was dated January 24, 2017. There was nothing on record to show that the final assessment order had not been dispatched on the said date. The

demand was uploaded to the portal on March 13, 2017, so the portal showed the date as the date of order. The entire order was not uploaded, but only the demand was uploaded. Therefore, the final assessment order was dispatched within the time limit prescribed and was not barred by limitation. (AY. 2012-13)
VMware Software India P. Ltd. v. Dy. CIT (2022)98 ITR 219 (Bang) (Trib)

S. 144C: Reference to dispute resolution panel -Order not in conformity with directions of Dispute Resolution Panel - Order bad in law and not sustainable.[S. 143(3)]
Held, that it was wholly apparent that the final assessment order was not in conformity with the Dispute Resolution Panel's directions and was, therefore, illegal, bad in law and unsustainable and the transfer pricing adjustment made in the final assessment order was to be deleted. Since the transfer pricing adjustment incorporated in the final assessment order was deleted, the grounds with regard to the transfer pricing adjustment on the merits was not adjudicated. (AY. 2012-13).
Vmware Software India P. Ltd. v. Dy. CIT (2022)98 ITR 219 (Bang) (Trib)

S. 144C : Reference to dispute resolution panel -Draft assessment order- Assignment of finality to draft order- Order vitiated.[S. 143(3)]
Held, that owing to assigning finality to the assessment at the stage of the draft order itself, the resultant final assessment order was vitiated in the eyes of the law and could not stand. The issue of jurisdiction was decided in the assessee's favour. (AY.2011-12)
YCH Logistics (India) Pvt. Ltd. v. Dy. CIT (2022)98 ITR 467 (Chennai) (Trib)

S. 144C : Reference to dispute resolution panel -Capital gains - Non-Resident- Eligible assessee —Change Of Law — Amendment to include non-Residents as eligible assessees with effect from 1-4-2020 — Pending assessments for which orders passed after 1-4-2020 is covered by amended section .[S. 45, 49]

Held that under the Explanatory Memorandum to the Finance Bill, 2020, the amendment to include non-residents as eligible assessees with effect from April 1, 2020 mentioned that if the Assessing Officer proposed to make any variation after this date, in the case of an eligible assessee, which was prejudicial to the interest of the assessee, the above provision shall be applicable. This would mean that all pending assessments for which orders were passed after April 1, 2020 would get covered by the amended section of 144C of the Income-tax Act, 1961 whereby the non-residents would be eligible assessees for taking up the Dispute Resolution Panel route. On the facts the Assessing Officer had issued the draft assessment order on September 27, 2021 and accordingly the amended provisions of section 144C would become applicable.(AY.2019-20)

Ravi Kumar Tirupati Parthasarathy v. Dy. CIT (2022)99 ITR 70 (SN)(Bang) (Trib)

S. 144C : Reference to dispute resolution panel - Arm's length price —Transfer pricing adjustment was not in accordance with the direction of the Dispute Resolution Panel – Order was quashed [S. 144C(13)]
Held that the final order of assessment the Assessing Officer retained the same transfer pricing adjustment as in the draft assessment order merely because the Transfer Pricing Officer had not passed the order giving effect to the directions of the Dispute Resolution

Panel and considering the time-limit for passing the final assessment order. This would mean that the final assessment order passed by the Assessing Officer was not in accordance with the directions of the Dispute Resolution Panel. The assessment framed in this case was quashed.(AY.2017-18)

Trivium Esolutions Pvt. Ltd. v. Dy. CIT (2022)99 ITR 27 (SN)(Bang) (Trib)

S. 144C : Reference to dispute resolution panel -Limitation - Time-limit for passing final order of assessment — One month from end of month in which directions of Dispute Resolution Panel received by Assessing Officer — Order passed beyond that date — Non est in law . [S. 92CA (3), 144C(13), 153 , 153B]

Held that under section 144C(13) of the Act, the Assessing Officer should have passed the final assessment order, notwithstanding anything to the contrary contained in section 153 or section 153B , within one month from the end of the month in which the directions of the Dispute Resolution Panel are received. The order sheet showed that the Assessing Officer received the documents on December 30, 2021. Under section 144C(13) of the Act, the order should have been passed on or before January 31, 2022, whereas the Assessing Officer had passed the final assessment order on February 2, 2022, which was beyond the time limit. Hence, the order passed by the Assessing Officer was barred by limitation under section 144C(13) . The final assessment order was non est in the eyes of law.(AY.2017-18)

Kontoor Brands India P. Ltd. v. ACIT (2022)100 ITR 73 (SN)(Bang) (Trib)

S. 144C : Reference to dispute resolution panel -Rectification application- Rule 13 does not permit a rectification application being entertained from a person other than assessee, Assessing Officer or DRP itself - Miscellaneous application filed by TPO before DRP for rectifying various mistakes in order of DRP would not be maintainable.[S.92C, 154, Rule 13]

Scheme of rule 13 does not permit a rectification application being entertained from a person other than assessee, Assessing Officer or DRP itself and, thus, miscellaneous application filed by TPO before DRP for rectifying various mistakes in order of DRP would not be maintainable . Tribunal also held that since no mistake was apparent from record, directions passed by DRP to rectify its order on basis of application made by TPO was quashed . Followed ITO v. Volkart Brothers (1971) 82 ITR 50 (SC), CIT v. Ramesh Electric & Trading Co. (1993) 203 ITR 497 (Bom) and CIT v. Reliance Telecom Ltd. (2021) 323 CTR 873/ 208 DTR 113 (SC) (AY. 2016-17)

Shapoorji Pallonji Bumi Armada (P) Ltd. v. ACIT (2022) 220 TTJ 951 / 139 taxmann.com 572 (Mum)(Trib)

S. 144C : Reference to dispute resolution panel - Rectification order – Not barred by limitation - Order was passed within six months from end of month in which original order was passed- It would not be open to Assessing Officer to hold giving effect to these directions even if said directions were found to be prima facie incorrect. [S. 92C ,144C(13) , R. 10]

Section 144C(13) enjoins Assessing Officer to complete assessment 'in conformity with directions' issued by DRP, and it would not be open to him to hold giving effect to these directions even if same were found to be prima facie incorrect . Accordingly the assessment order and giving effect to directions of DRP could not be to said to be non-application of mind by Assessing Officer . (AY. 2016-17)

Michael Page International Recruitment (P) Ltd. v. Dy. CIT (2022) 219 DTR 57 / 99 ITR 65 / 220 TTJ 137 / 143 taxmann.com 253 (Mum)(Trib)

S. 144C : Reference to dispute resolution panel - Draft Assessment order — Procedure — Mandatory — Issue of demand notice and penalty notice along with draft assessment order —Assessment order was quashed. [S.143(3), 156]

The Tribunal held thatthe issue of demand notice along with the draft assessment order, being a legal matter, went to the root cause of the assessment proceedings. As a result this issue deserved to be considered before going into the merits of the case. According to section 144C of the Income-tax Act, 1961, it is a mandatory for the Assessing Officer to pass the draft assessment order in an assessment involving international transactions, in terms of the procedure laid down therein. As the Assessing Officer had passed the order under section 143(3) read with section 144C(1) of the Act, along with demand notice under section 156 and penalty notice under section 274 read with section 271, such order passed without following due process of law was liable to be set aside. As the assessment order stood quashed, all other issues became academic. (AY. 2011-12)

Suretex Prophylactics (India) Ltd. v. ACIT (2022)96 ITR 275 (Bang)(Trib)

S. 144C : Reference to dispute resolution panel – Draft assessment order was not forwarded to correct address – Order is barred by limitation [S. 92CA(3), 127(2) 153]
Assessee entered into a number of international transactions with its associated enterprises abroad, and as a consequence of order passed under section 92CA(3), returned income of assessee was proposed to be increased by Assessing Officer, by making adjustment . The asseessee contened that the Assessing Officer did not 'forward' draft assessment order on or before prescribed date, i.e., on 31-12-2018 hence the assessment order was time-barred . The Revenue contended that the Assessing Officer had sent draft assessment order to assessee on

10-12-2018, even though at old address, he had 'forwarded' draft assessment order within prescribed time limit . On Appeal the Trinunal held that the notice dated 25-10-2018 issued by Assessing Officer under section 142(1), was on new address and, thus, justification for use of old address, was devoid of legally sustainable merits . Since there was no forwarding, not even an effort to forward, draft assessment order to correct address, or at least address furnished to Assessing Officer under proviso to rule 127(2), within permitted time frame under section 153 read with section 144C, said order was barred by limitation (AY . 2015-16)

DSV Solutions (P) Ltd. v. Dy. CIT (2022) 220 DTR 297 /144 taxmann.com 181 / (2023) 221 TTJ 310 (Mum)(Trib)

S. 144C : Reference to dispute resolution panel-Failure to pass draft assessment order-Violation of procedure-Order set aside [S. 144C(13) 271(1)(c)]

In terms of section 144C, it is mandatory for the assessing officer to pass draft assessment order in accordance with procedure laid down therein. Accordingly, where draft assessment order passed was also accompanied with a notice of demand under section 156 and notice under section 274 read with section 271(1)(c) initiating penal proceedings, there being violation of procedure prescribed in Act, impugned order was to be set aside.

Cisco Systems Services B.V. v. DCIT (IT) *(*2022) 194 ITD 135/ 220 TTJ 378/ 219 DTR 249 (Bang) (Trib.)

S. 144C : Reference to dispute resolution panel-Order passed without following the directions of DRP-Order was set aside [S. 92C 144C(5)]

Where the assessing officer passes a final assessment order without incorporating or giving effect to directions of DRP in terms of section 144C(13) and said impugned assessment order was merely a verbatim repetition of draft assessment order, said order is in violation of the mandatory provisions of section 144C and is therefore null and void. (AY. 2016-17)

Olympus Medical Systems (P.) Ltd. v. ACIT *(*2022) 194 ITD 676 (Delhi) (Trib.)

S. 144C:Reference to dispute resolution panel-Transfer pricing-No variation in Arm's Length Price-Barred by limitation-No draft order as assessee is not an "eligible assessee"-Draft order and final assessment order is quashed. [S.92CA(3), 144C(15)(b)]

The assessee challenged the draft assessment order on the ground that it is not an 'eligible assesseee ' as per section 144C(15) since no transfer pricing adjustment has been proposed in its case and the AO ought not to have passed the draft assessment order u/s 144C(2) of the Act. On appeal to the Tribunal, it was held that since no variation under section 92CA(3) of the Act was warranted and that 'assessee not being a foreign company will not categorize the assessee to be an 'eligible assessee' as per the provision of section 144C(15)(b) of the Act which defines an 'eligible assessee'. Accordingly, the draft assessment order passed under section 144C(1) of the Act and the final assessment order pursuant to the draft order are not in accordance with the mandate of the Act and therefore, liable to be quashed quashed**. (ITA No. 454/Mum/2022 dated October 10, 2022)**
(AY. 2017-18)

B. Braun Medical (India) Pvt Ltd v. DCIT (Mum)(Trib) (UR)

S. 144C : Reference to dispute resolution panel-Draft assessment order with demand notice-Initiating penalty proceeding-Draft assessment order being contrary to provisions of section 144C could not survive in eyes of law. [S. 156, 271(1)(c)]

In terms of section 144C, it is mandatory for the assessing officer to pass draft assessment order in accordance with procedure laid down therein. Accordingly, where draft assessment order passed was also accompanied with a notice of demand under section 156 and notice under section 274 read with section 271(1)(c) initiating penal proceedings, there being violation of procedure prescribed in Act, impugned order was to be set aside. (AY. 2013-14)

Cisco Systems Services B.V. v. DCIT (IT) (2022) 193 ITD 809 (Bang) (Trib.)

S. 144C: Reference to dispute resolution panel-Rectification application by TPO-Rectification order by DRP-Not maintainable. [S. 144C(14), 154]

Rule 13 of the DRP Rules unambiguously provides that the rectification powers of the Dispute Resolution Panel can be exercised only in one of the three circumstances-namely viz. (a) suo motu, i.e., on its own by the DRP; (b) on an application made by the eligible assessee, or (c) on an application made by the Assessing Officer. The scheme of rule 13 does not visualize any rectification of mistake, by the Dispute Resolution Panel, on an application by the Transfer Pricing Officer. Therefore, the application filed by the Transfer Pricing Officer before the Dispute Resolution Panel, irrespective of its nomenclature, was liable to be dismissed. (AY. 2016-17)

Shapoorji Pallonji Bumi Armada Pvt Ltd v. ACIT (2022) 139 taxmann. com 572 (Mum)(Trib)

S. 144C : Reference to dispute resolution panel-Condonation of delay-DRP does not have power to condone delay in filing objections by assessee before Panel.

DRP derives its authorities and powers from the provisions of section 144C and its procedures are governed by Income-tax (Dispute Resolution Panel) Rules, 2009. The provisions of the Act or Rule do not give power to the DRP to condone any delay in filing the objections by the assessee. If the Legislature had intended to give such powers, it would have been expressly implied as in the case of powers with the CIT(A) under section 249(3) and ITAT under section 253(5). (AY. 2012-13)

Lam Research (India) (P.) Ltd. v. ACIT (2022) 192 ITD 449 (Bang) (Trib.)

S. 144C : Reference to dispute resolution panel-Period of limitation has to be strictly followed-Order passed beyond period of limitation prescribed under section 144C(4)(b) of the Act is declared invalid [S. 144C(4)(b)]

An assessee has thirty days from date of receipt of draft assessment order to file objections before DRP and in case, the assessing officer does not receive any objections within period prescribed challenging the proposed variation, he has to complete assessment within a period of one month from end of month in which period of filing of objections expires. There is no compulsion on assessing officer to wait beyond period of limitation prescribed under statute for completing final assessment, anticipating that assessee would be filing an objection before

DRP as period of limitation prescribed under sub-sections 144C(2) and 144C(4) is sacrosanct and has to be strictly followed, both by assessee as well as revenue. Accordingly,order passed beyond period of limitation prescribed under section 144C(4)(b) of the Act is invalid.(AY. 2012-13)

Astro Offshore Pte. Ltd. v. DCIT (IT)(2022) 192 ITD 675 / 215 TTJ 1/ 209 DTR 26 (Delhi) (Trib.)

S. 145 : Method of accounting-Non-issuance of sale memos-Mere non-issuance of sale memos could not have been a ground to reject entire account books particularly since the entries pertained to to sale of country liquor to tribal population.

Assessing Officer rejected account books of assessee on ground that sale memos were not issued by assessee. Both Commissioner (Appeals) and Tribunal upheld rejection of account books.On appeal the Court held that It was noted that for assessment year 2001-02 Tribunal had accepted account books of assessee and allowed appeal setting aside orders of Assessing Officer and Commissioner (Appeals). It was further noted that books of account of assessee for assessment year 1998-99 had been accepted by Excise Department. Mere non-issuance of sale memos could not have been a ground to reject entire account books particularly sincethe entries pertained to sale of country liquor to tribal populations. Tribunal had overlooked fact that account books of assessee were not rejected by Excise Department and Tribunal itself had accepted them for subsequent assessment year 2001-02. Accordingly-rejection of account books of assessee was not justified. (AY. 1998-99)

Cresent Co. v. CIT (2022) 214 DTR 77 / 137 taxmann.com 408 (Orissa)(HC)
Moinuddin Enterprises v. CIT (2022) 214 DTR 77 (Orissa)(HC)
Ganpur Wine v. CIT (2022) 214 DTR 77 (Orissa) (HC)

S. 145 : Method of accounting-Construction and development of property-Project completion method-Principle of consistency-Not justified in adopting percentage completion method.

Assessee is engaged in business of development of property It had followed project completion method which had been accepted by department in assessment year 2014-15. For the assessment year 2015-16 the Assessing Officerheld that assessee was a mere contractor and it ought to have adopted percentage completion method as per AS-7. CIT (A) held that the assessee had been consistently following project completion method which had been accepted by department andreversed order passed by Assessing Officer. Order of CIT (A) was affirmed by the Tribunal.On appeal by Revenue, High Court affirmed the order of the Tribunal.

PCIT v. Salarpuria Simplex Dwelling LLP. (2022) 289 Taxman 264 / 216 DTR 425 (Cal)(HC)

S. 145 : Method of accounting-Unexplained investments Undervaluation of stock-Statement of director in the course of survey-Solely relying on statement of director addition cannot be made [S. 69, 133A]

Assessee-company was engaged in business of selling sarees. During survey conducted at business premises of assessee, Assessing Officer relied on statement of director of assessee-company and made additions on account of undervaluation of stock.CIT(A) held that disclosure made in course of survey should not be the sole basis of assessment, and it should be based on papers found and impounded during course of survey Addition was deleted. Order of CIT(A) was affirmed by Tribunal. On appeal by the Revenue dismissing the appeal the Court held that Tribunal was right in deleting addition made by Assessing Officer on account of undervaluation of stock by solely relying upon statement of director of assessee-company which was recorded during course of survey proceedings. (AY. 2011-12)

PCIT v. Ambika Sarees (P) Ltd (2022) 288 Taxman 174 (Cal) (HC)

S. 145: Method of accounting-Valuation of stock-Valuation adopted by Revenue valid-No question of law.[S.260A]

Dismissing the appeal the Court held that all the Income-tax authorities based on the material before them, or the lack of proper evidence before them, held that the disparity between the cost price and the market price remained unexplained by the assessee. The Tribunal noted that the assessee failed to explain the basis for valuation of the closing stock being lower than even the average cost or the average market price. The Tribunal also noted that the assessee failed to produce any cogent evidence to substantiate its claim even before the Tribunal despite the grant of opportunity. The valuation adopted by the Revenue was valid. No question of law arose from the order.. Followed CIT v. British Paints India Ltd (1991) 188 ITR 44 (SC) (AY. 2009-10)

Goa Carbon Ltd. v. JCIT (2022)446 ITR 590/ 289 Taxman 322 (Bom) (HC)

S. 145 : Method of accounting-Change of method-Mercantile System of accounting to completed contract accounting-Change is bonafide-Income-Accrual-Bills certified as relating to work carried out in relevant assessment year cannot be recognised as receipts and brought to tax. [S. 4, 5]

On reference the Court held that once it was held that the completed contract method adopted by the assessee in the facts and circumstances was right, the bills certified as relating to work carried out could not be recognised as receipts and brought to tax in the assessment year 1986-87. The question that mercantile system of accounting should not result in curtailing the discretion available to the assessee to follow completed contract method . Court also held that since the assessee was subjected to vagaries and uncertainties of fluctuation, it had preferred to have completed contract method for the entire project. The effect of these transactions and recognition of revenue would arise either upon completion of the contract or rescission of contract, other foreseen and unseen eventualities that arose in the course of the execution of the contract. In view of the finding of fact recorded by the Tribunal and having

regard to the deferred payment agreement entered by the assessee, the bills having been certified did not create an enforceable right even in the subsequent assessment year.(AY.1986-87).*(*AY.1987-88 to 1991-92)

CIT v. Bhageeratha Engineering Ltd. (No. 1) (2022)448 ITR 81/288 Taxman 737 (Ker)(HC)
CIT v.Bhageeratha Engineering Ltd. (No. 2) (2022)448 ITR 93 / 142 Taxmann.com 155 (Ker)(HC)
Editorial: SLP of revenue dismissed, CIT v.Bhageeratha Engineering Ltd. (No. 2)(2022) 289 Taxman 10(SC)

S. 145 : Method of accounting-Rejection of accounts-Estimate should be fair-Local knowledge and circumstances of assessee should be taken into consideration-Order of Tribunal affirmed [S. 145(3), 260A]

Dismissing the appeal of the Revenue the Court held that all the records, i. e., books of account, sales and purchase vouchers had been fully produced by the assessee. In the subsequent assessment years, the Assessing Officer had passed the order under section 143(3) of the Act in respect of the same business activities of the assessee, which gave rise to net profit of 2.53 per cent. and 2.99 per cent. Order of Tribunal is affirmed (AY.2009-10)

PCIT v. Smart Value Products and Services Ltd. (2022)448 ITR 145 (HP)(HC)

S. 145 : Method of accounting-Records were destroyed by fire-Rejection of books of account not justified.[S. 133A]
Dismissing the appeal of the Revenue the Court held that in course of search conducted at business premises of assessee survey team had seized electronic data and other records but there was no finding that any entry therein was false or fabricated and the assessee was able to substantiate with official records to show that there was a fire accident in said premises which had destroyed records. Order of Tribunal is affirmed. (AY. 2004-05 to 2010-11)
PCIT v. Inland Road Transport Ltd. (2022) 286 Taxman 613 (Cal)(HC)

S.145: Method of accounting-Business expenditure-Advertisement expenditure-Allowable as revenue expenditure-Method of accounting-Proportionate completion method-Profits Accounted for chit discount on completed contract method-Revenue neutral-Method of accounting justified [S.37(1), Chit Funds Act, 1982, 21(1(b)]
Allowing the appeals the Court held that given the rights of the subscriber, when section 21 of the 1982 the Chit Funds Act provides for 5 per cent. of the chit amount to be given to the assessee as foreman which was stated therein as commission, remuneration or for meeting the expenses of running the chits, and when the dividend to the assessee as foreman had to come only from out of the discount, the Department was not justified in contending that the assessee could not adopt the completed contract method for income recognition. The assessee was justified in adopting the completed contract method to arrive at the real income. The assessee's expenditure was related both to the administrative costs and to the advertisement

costs. The expenses could not be viewed as relatable to the particular series alone, but as relating to the running of the business and were revenue expenditure of the relevant assessment year in which it was incurred. The fact that the advertisement referred to the beginning of a new series, per se, would not mean that it was not relatable to the conduct of the business of the assessee in general. The advertisement was more in the nature of information as to the business of the assessee and for its promotion. The plea of the Department that the change in the method of accounting was not bona fide was taken without any material. Except for the issue on mutuality relating to the assessment years 1988-89 to 1995-96 and 1999-2000 the findings of the Tribunal to the extent regarding the method of accounting were set aside.(AY.1987-88 to 1995-96, 1999-2000)

Shriram Chits and Investments (P.) Ltd. v. ACIT (2013) 85 DTR 144/ 85 Taman 356/ (2022) 442 ITR 54 (Mad)(HC)

S. 145 : Method of accounting-Estimation of net profit-Interest and depreciation allowed-Question of fact.[S. 260A]

Dismissing the appeal of the revenue the Court held that the when Tribunal finding gross profit shown by assessee to be reasonable, theassessee's claim of interest expenditure and depreciation was required to be allowed.When Tribunal, after thoroughly examining material available on record had assessed income of assessee and same being essentially a question of fact and appreciation of evidence. No question of law arose. (AY. 2016-17)
PCIT v. Varha Infra Ltd. (2022) 285 Taxman 561/ 135 taxmann.com 77 / 328 CTR 115 /216 DTR 316 (Raj) (HC)

S. 145 : Method of accounting-Valuation of closing stock-Estimation of gross profit-Produced books of account-Order of Assessing Officer set aside [S. 133A, 143(3)]

Assessing Officer rejected valuation of closing stock by assessee for non-production of stock register and estimated it on basis of gross profit margin. Assessee submitted that with assessment having been completed under section 143(3) and after assessee had produced its books of account, question of invoking section 145 did not arise. CIT(A) and Tribunal affirmed the order of the Tribunal. On appeal the Court held that since in rejecting assessee's books of account under section 145 a serious error was committed, order of Assessing Officer was to be set aside. (AY. 2005-06)
Subhendu Kumar Subudhi. v. CIT (2022) 285 Taxman 693 /136 taxmann.com 87 / 211 DTR 178 /325 CTR 357 (Orissa) (HC)

S. 145 : Method of accounting-Rejection of books of account-Bogus purchases-Order of Tribunal modifying the quantum was set aside-Cost of Rs.5000 was imposed on the assessee. [S. 145(3)]

The Assessing Officer rejected the books of account and assessed the unverifiable purchases on the basis of 25 per cent. of the bogus purchases. CIT (A) affirmed the order of the

Assessing Officer. On appeal the Tribunal reversed the finding of the Commissioner (Appeals) and modified the disallowance to the extent of 2.19 per cent. and accordingly restricted the addition made by the Assessing Officer. On appeal the Court held that the Tribunal was not justified in confirming the finding of unverified purchases shown by the assessee and the consequent rejection of the books of account under section 145(3) and thereafter restricting the addition made by the Assessing Officer. The order of the Commissioner (Appeals) was confirmed. As a special case the High Court has imposed a cost of Rs 5000 in each appeals which the assessee was directed to deposit with the library of the Rajasthan High Court Bar Association.

CIT v. Mohan and Co (2022) 440 ITR 247 (Raj)(HC)

CIT v. Agrasen Jewellers (2022) 440 ITR 247 (Raj)(HC)

S. 145 : Method of accounting-Construction business-Change of method from project completion method to percentage completion method –Revenue neutral-Revised Accounting Standard 7-Held to be valid.

Dismissing the appeal of the revenue the Court held that the assessee has changed the method of accounting from project completion method to percentage completion method. The change was revenue neutral. Relied CIT v. Bilahari Investment Pvt Ltd (2008) 299 ITR 1(SC) (AY. 2005-06)

CIT v. Prestige Estate Projects Pvt Ltd (2022) 440 ITR 343 (Karn) (HC)

S. 145 : Method of accounting -Difference between contractual receipts according to Form 26AS and in books of assessee — Meagre difference – Addition was deleted . [S. 5]

Held that the assessee had explained the difference as being on account of the assessee not booking the relevant invoices in his books as sales either for the reason that he had reflected the same was work-in-progress or had booked it in the subsequent year, and had also explained the reason for doing so, substantiated with the copy of ledger account of the parties. Even according to the accrual system of accounting, the income is said to have accrued only when the other party accepts its liability with respect to the bills raised on it. Until then no income is said to be accrued. Addition was deleted . (AY. 2014-15)

Narendra Laxmansingh Solanki v. Dy. CIT (2022) 98 ITR 10 (SN)(Ahd) (Trib)

S. 145 : Method of accounting – Valuation of stock –Joint venture - Addition on account of construction work – Addition was deleted .

Assessee, a joint venture, filed return of income on basis of one set of audited financial statement . During scrutiny proceedings it filed another set of financial statement wherein additional amount of construction work in progress was reported . Assessing Officer made the addition .CIT(A) confirmed the addition . On appeal the Tribunal held that the additional amount of construction work in progress was merely valuation difference. It had valued the construction work in progress for the purpose of Management Information System (MIS) account at a higher value for the purpose of consolidation with the financial statement of joint venture partner, *i.e.,*HCC. Accordingly the addition was deleted . (AY. 2014 -15 , 2015 -16)

HCC Samsung Joint Venture v. ACIT (2022) 220 DTR 105/ 220 TTJ 631/ (2023) 148 taxmann.com 119(Mum)(Trib)

S. 145 : Method of accounting – Work in progress – Notional valuation- Consolidating books of account – Addition is deleted .[S. 69]

Assessee filed return of income on the basis of one set of audited financial statements. During the scrutiny proceedings, it filed another set of financial statements wherein additional amount of construction WIP was reported. The AO made addition as income from undisclosed sources . On appeal the Tribunal held that there is no change in number of items of inventory of construction WIP as shown in the first set of financial statements as well as second set-Only difference is that in the second set, construction WIP has been valued higher only for the purpose of consolidated accounts of the venture partner. Amount is only in the nature of notional valuation which has been carried out by the joint venture partner for the purpose of consolidating in its books of account and which cannot be made a basis for addition in the hands of the assessee-Impugned addition deleted. Followed, CIT v. Laxmi Engineering Industries (2008) 5 DTR (Raj) 106 (HC) (AY. 2014-15 , 2015-16)

HCC Samsung Joint Venture v. ACIT (2022) 220 DTR 105 / 220 TTJ 671 (Mum)(Trib)

S. 145 : Method of accounting -No defects in books of account – Estimation of GP was deleted - Forward dated bills duly accounted – Sufficient cash in hand -Deletion of addition is proper. [S.68 , 145(3), 153A]

Held that an insignificant defect in the books of account should not be the basis of rejection of entire books of account. There were no major defects pointed out by the Assessing Officer warranting the rejection of the books of account. Accordingly the estimation of Gross profit at 38 -63 percent was held to be not justified . The addition was restricted to 20 percent of gross profit . Tribunal also held that once the revenue had been duly recorded in the books of account, it could not be treated or said to be unaccounted money or income and there was no allegation against the assessee that these sales were not recorded in the books at all and the only allegation was that they were entered on a later date. On perusal of the day-to-day cash book, there was sufficient cash in hand on those dates and even if the sales were taken out, the cash in hand did not become negative. The action of the Commissioner (Appeals) deleting the addition on account of unexplained cash credit was held to be justified (AY.2017-18)

Roop Square P. Ltd. v. ACIT (2022) 99 ITR 451 (Chd)(Trib)

S. 145 : Method of accounting - Inventory write off – Failure to provide the evidence – Not allowable as deduction [S. 28(i)]

Held that in the instant case, it was not shown that the write off was related to a contingency that existed as on March 31, 2002. On the contrary, there could not be any contingency with regard to the raw material or finished goods. Order of CIT(A) was affirmed . (AY.2002-03)

Herbalife International India Pvt. Ltd. v. Dy. CIT (2022)100 ITR 456 (Bang) (Trib)

S. 145 : Method of accounting -Real estate development business- —Recognizing income at time of delivery of possession to customer- Applying the percentage method of accounting is not justified .

Dismissing the appeal the Tribunal held that the assessee had followed a well-recognised method of accounting following a notified accounting standard under section 145 of the Act. Recognizing income at time of delivery of possession to customer. Applying the percentage method of accounting is not justified . (AY.2011-12)
ACIT v. D. D. Resorts Pvt. Ltd. (2022)95 ITR 1 (SN) (Delhi) (Trib)

S. 145 : Method of accounting – Chit fund business — Accrual of income -Estimating the commission at five percent of gross chit collection is not proper -Matter remanded . [S. 5]
Held that the method of accounting adopted and estimation of income done by the Revenue was against the principles laid down by the courts. In the light of the additional evidence produced by the assessee which demonstrated the method of accounting followed by the assessee, the issue remanded to the Assessing Officer for consideration de novo. The principles laid down in the decision of the Madras High Court in Shriram Chits and Investments (P) Ltd. v. ACI (2022) 442 ITR 54(Mad)(HC) .(AY.2015-16 to 2017-18)
Gowrinath Chits Pvt. Ltd. v. ITO (2022) 95 ITR 9 (SN)(Bang) (Trib)

S. 145: Method of accounting -Accrual of income –Entitled to receive cold storage charges only on preservation of potatoes in good, marketable condition up to that time - No accrual of cold storage charges over time or right to receive them in part performance of contract — Income for business cycle February to November did not accrue to assessee during February-March — No adjustment for contract period February to November to be made for year ending March — Direct input cost of provision of cold storage charges relating to February and March to be kept in abeyance to be claimed in following year.[S. 4 , 5, 37 (1)]
That the farmer had only contracted to receive the potatoes at the beginning of the marketing season in October-November, so that his potatoes had to be necessarily preserved by the assessee up to that time, i. e., latest by November 30. It was only on the preservation of potatoes, i. e., in good, marketable condition, up to that time, that the assessee was entitled to receive the cold storage charges. The cold storage charges were essentially charges for storing goods (agriculture produce) under defined (controlled) conditions, as to temperature, etc., the contours of the contract, largely oral, as well as the conduct of the parties and the right to receive the charges, and thus the accrual of income in its respect, was only on the cold storage fully performing its part of the contract, i. e., where it delivered, or was in a position to deliver the agriculture produce (potatoes) stored to the farmer in a good, marketable condition at the end of the period for which it was contracted to be stored. There was, as such, in the given facts and circumstances, i. e., the nature and peculiarities of the contract, including the essence of time, no accrual of income (cold storage charges) over time, and no right to receive it accrued, much less vested, in the assessee, on part performance of the contract. Thus, income for the business cycle February to November did not accrue to the assessee to any extent during the period February-March. No adjustment qua any part of the gross revenue for the business cycle or contract period (February-November) was to be made for the year ending March. That all the costs that went to form the direct, input cost of the provision of cold storage charges, being principally on labour, fuel and power, to the extent they related to the provision of the services for the months of February and March, were to be kept in abeyance under an accounting head, as “prepaid expenses”, for being claimed in the following year, i. e., against the revenue for that period, which included that corresponding to these two months. The direct, input cost on the part performance of the contract for the months of February and March shall be set aside as “closing stock” for being adjusted on the accrual of the corresponding income, with a similar

adjustment being made for the opening stock, and altering the returned income to the extent of a difference between the two. As regards indirect costs, no such set-aside or abeyance was required as those were essentially period costs and, thus, eligible for being charged to the operating income statement of the period in which these stand incurred.Accrual of income on the accrual or the vesting of the right to receive it, would be only on the basis of the contract defining the rights and obligations of the parties inter se, so that the principle of accrual would apply to a period income as well. *(*AY.2007-08, 2009-10)
A.K. Cold Storage Pvt. Ltd. v. ITO (2022)95 ITR 549 (Lucknow)(Trib)

S. 145 : Method of accounting - Accrual of Liability — Octroi expenses — Accrual of income – Incentives - Amortization of only part payment in profit and loss account — Addition made after reducing part payment accounted for by assessee — Proper - Sales return policy accounted based on sound accounting principles . Deletion of addition by Commissioner (Appeals) is proper .
Held that liability to pay octroi expenses pertaining to financial years 2011-12 and 2012-13,crystallizing during year paid before filing of return. Allowable as deduction . Amortization of only part payment in profit and loss account . Addition made after reducing part payment accounted for is proper .Sales return policy accounted based on sound accounting principles . Deletion of addition by Commissioner (Appeals) is proper . *(* AY.2014-15)
Inditex Trent Retail India Pvt. Ltd. v. Add. CIT (2022)95 ITR 102 (Delhi)(Trib)

S. 145 : Method of accounting-Accrual of income-Unearned revenue-Additional evidence produced-Matter is remanded for reconsideration-Provision made reversed in next year-Remanded for verification [S. 5, 40(a)(ia)]

Assessee claimed that unearned revenue subscription amount was billed to customers in advance for which corresponding services were yet to be rendered. Tribunal held that since assessee produced additional evidences in form of invoices and party-wise breakup of unearned income, same was required to be verified by lower authorities accordingly the matter was remanded for reconsideration. Assessee made provisions for expenses at end of financial year which were reversed on next day of subsequent financial year, since assessee claimed that provisions which were already disallowed in previous assessment year were reversed and to avoid double disallowance same was claimed as deduction in computation, AO was required to verify ledger and journal entries and deduction could not be disallowed merely on ground that details of tax deducted were not produced. (AY. 2012-13, 2013-14)
Kable First India (P.) Ltd. v. DCIT(2022) 197 ITD 67 (Bang) (Trib.)

S. 145 : Method of accounting-Discrepancy in receipts as shown in 26AS-Estimation of income-Contractor-Without pointing out any defects in the books of account merely on the basis of discrepancy in in receipts as shown in 26AS and books of account addition cannot be made. [S. 68, 133(6), Form, 26AS]

Held that information as per data base of revenue could not, by itself, be a legally sustainable basis for making addition. When the Assessing Officer had not found a single defect in assessee's books of account and enquiry made by him under section 133(6) had been properly explained by assessee, addition made by Assessing Officer on difference between amount reflected in books of account and that in terms of form 26AS was to be deleted.(AY. 2013-14)
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Shri Jeen Mata Buildcon (P.) Ltd. v. ITO (2022) 97 ITR 706 / 197 ITD 256 (Jaipur) (Trib.)

S. 145 : Method of accounting-Search-No incriminating evidence was found-No addition could be made on account of difference in stock of sugar-Valuation of stock-No addition could be made on account of difference in stock of molasses.[S. 132, 153A]

Held that during search neither any incriminating evidence, nor any other document was found which could justify allegation of unaccounted sale and quantum of sugar were in tune with average daily production, no addition could be made on account of difference in stock of sugar. Held that discrepancy arising due to chemical reaction was confirmed by Chief Engineer at time of search itself and molasses were kept under control of excise department and could be removed only under supervision of excise inspector who was stationed at factory, no addition could be made on account of difference in stock of molasses. (AY. 2011-12)

Uttam Sugar Mills Ltd. v. DCIT (2022) 196 ITD 601 (Delhi) (Trib.)

S. 145 : Method of accounting-Development of property and construction-Percentage completion method (PCM)-As per clause (5) of Guidance Note issued by ICAI, cost of construction and also saleable project area needed to be taken into account while recognizing revenue under Percentage completion method-Matter remanded. [AS-9]

Assessee-company, engaged in developing property and constructing residential apartments and commercial complex, filed its return of income declaring loss. Assessing Officer held that the assessee had not adopted Percentage completion method for recognition of revenue as per AS-9. Assessee had submitted calculation of revenue recognition following percentage completion method (PCM) and had shown that percentage completion was only 20.03 per cent. Assessing Officer held that n level of construction was more than 25 per cent of construction cost and more than 10 per cent of agreement value had been realized, and revenue would be recognizable from above project during relevant period as per AS-9 and, accordingly, income had been assesses. Held that as per clause (5) of Guidance Note issued by ICAI, cost of construction and also saleable project area needs to be taken into account while recognizing revenue under PCM. Since saleable area for year under consideration as a percentage to total saleable area was much less than 25 per cent and Assessing Officer had considered revalued value of cost of land for purpose of arriving at total project instead of actual cost of land, issue was to be remitted back to Assessing Officer with a direction that percentage of cost and saleable area had to be recomputed in accordance with para 5.3 of ICAI Guidance Note on Real Estate Transactions. Matter remanded. (AY. 2015-16)

Krishna E-Campus (P.) Ltd. v. DCIT (2022) 196 ITD 700 (Bang) (Trib.)

S. 145 : Method of accounting-Estimation of income-Discrepancy in receipt shown in 26AS-Merely on the basis of difference addition cannot be made [S. 68, 133(6), Form No 26AS]

Allowing the appeal the Tribunal held that the Assessing Officer has not found a single defect in books of account and in the enquiry made under section 133(6) the difference had been properly explained. Accordingly the addition on difference between amount reflected in books of account and in 26AS was liable to be deleted. (AY. 2013-14)

Shri Jeen Mata Buildcon (P) Ltd v. ITO (2022) 197 ITD 256/ 97 ITR 756 (Jaipur) (Trib)

S. 145 : Method of accounting –Project competition method-Development agreement-Stock in trade-Advances received by an assessee landlord who has converted land in to stock in trade, following project completion method are not taxable on receipt basis [S. 4, 28(i), 45]

Dismissing the appeal of the Revenue the Tribunal held that since the land in question was treated as stock-in trade by the assessee in its books of account, transfer of the same cannot be assessed as capital gains, executing a development agreement granting permission to start advertising, selling and construction and permitting to execute sale agreement to a developer does not amount to granting possession u/s 53A of the Transfer of Property Act. Seshasaayee Steel Pvt Ltd v. ACIT 2020] 275 Taxman 187 / 421 ITR 46 (SC) The assessee is regularly and consistently following completed contract method, in the case of the developer also, the completed contact method has been accepted by the Revenue. (TS-648-ITAT 2022 (Mumbai) dt. 12-8-2022)(AY. 2006-07, 2008-09)

ACIT v. Suratchandra B. Thakkar (HUF) (2022) BCAJ-October-P. 56 (Mum)(Trib)

S. 145: Method of accounting-Rejection of Profit-No defects in the books of accounts-Similar profit margin in earlier years-Rejection of books of account is not justified-Estimation of net profit was deleted. [S. 145(3)]

The AO found that the labour charged debited was very high, and hence the gross profit shown was low. He rejected the books of account and estimated net profit @ 12.5%. On appeal the CIT(A)) reduced the estimate to 1% and affirmed 11. 5 percent. The Tribunal noted that the assessee was engaged in a labour-intensive industry, and most payments were made through banking channels. The assessee has produced the books of account duly audited, muster roll, bills, and vouchers. However, the AO has failed to consider the same or specify any irregularity in the books of account or identify a single voucher which is not in order. Further, it failed to carry out any independent investigation on the bills and vouchers furnished by the assessee. The Revenue accepts the net profit from the same business in earlier years. Hence, the Revenue cannot increase the net profit of the assessee without specifying any cogent reason or bringing evidence of comparable instances of assessee's engaged in similar trade or business.(AY. 2014-15)

Pooranchand Agarwal v. Dy.CIT (2022) 216 TTJ 507 (Raipur)(Trib)

S.145 :Method of accounting-Construction business-Business income-Percentage completion -project-Cost of project-Income from TDR-SRA project-TDR is inextricably linked to the project-Cost of building has to be deducted against sale of TDR-Matter remanded [S. 28(1)]

Held that receipt from TDR is inextricably linked to the project, therefore cost of building has to be adjusted against sale of TDR. TDR receipts cannot be considered in isolation, the assessee has the obligation under SRA agreement to complete SRA project Matter remanded. (TS-1096-ITAT-2021 (Mum)(AY. 2010-11, 2011-12) (Dt. 24-11-2021)

DBS Reality v. ACIT (2022) BCAJ-February-P. 40 (Mum)(Trib)

S. 145 : Method of accounting-Disputed amount-The tax paid in subsequent year-Double taxation-Same income cannot be taxed twice [S. 4,5]

The settlement of the disputed sum was arrived at and accepted by both parties during the stage of proceedings before the CIT(A) and which was promptly intimated to the CIT(A). It was observed by the CIT(A) that the PCIT and the Assessee, during the re-assessment pertaining to AY 07-08, 08-09, 09-10 and regular assessment for AY 13-14, agreed that no additions would be done in those years, in consideration of the appellant having owned up and paid tax on the entire amount in AY 2016-17. Therefore, the entire addition made on this account was deleted. (AY. 2012-13)

ACIT v. Uttaranchal Jal Vidyut Nigam Ltd (2022) 94 ITR 435 (Delhi)(Trib)

S. 145 : Method of accounting-Estimation of income in an arbitrary, capricious, and wild manner is not permitted in the eyes of the law and must be on a reasonable basis and congruent to the result of the prior previous years. [S. 145(3)]

Held that the AO is bound to make an honest estimation of income keeping in view the material available on record, past history of the case, local knowledge, and repute of the assessee. At the same time, the A.O. is also supposed to collect necessary material for the purpose, if so required. The assessee placed on record iron sector report of financial year 2013-14 which showed the ratio and reason of decline in iron market to explain the market conditions. Thus, taking into consideration the totality of the facts and circumstances of the case, addition was restricted to the GP rate of 2.04%.(AY.2014-15)

ITO v. Bhagchand Jain(2022) 94 ITR 472/ 217 TTJ 202 (Jaipur)(Trib)

S. 145 : Method of accounting-Developer-Mercantile system of accounting-Completion project-Deletion of additions on account of estimation of work-in-progress is justified.

Held, that the assessee was consistently following the mercantile system of accounting, where receipts in the form of development fees had been recognized on completion of the project. The additions on account of estimation of work-in-progress had been rightly deleted for both years.(AY.2005-06, 2013-14)

Dy. CIT v. Navratna Organizers and Developers P. Ltd. (2022)93 ITR 14 (SN)(Ahd) (Trib)

S. 145 : Method of accounting-Real estate business-Percentage completion method followed by assesee- AO not justified in rejecting the method of accounting followed by the Assessee.

Assessee is engaged in real estate business. Assessee converted its land held as capital into stock-in-trade and constructed building on this land. During, relevant assessment year, assessee entered into agreement for sale of these premises and for purpose of revenue recognition followed percentage completion method of accounting. Assessing Officer rejected said methodology and estimated business profits on sale of land as well as profits from construction activities separately on ground that land was converted into stock-in-trade and premises including undivided share in land was sold to various buyers during year. On appeal the Tribunal held that project was completed to extent of 11 per cent during relevant assessment year as certified by architect and same was recognised as revenue in books of account. Since method adopted by assessee was recognized method of accounting as per accounting standards issued by ICAI and this method was consistently followed in subsequent years to recognize revenue, Assessing Officer was not justified in rejecting methodology adopted by assessee for revenue recognition. (AY. 2005-06)
Peninsula Land Ltd. v. DCIT (2022) 193 ITD 366 (Mum) (Trib.)

S. 145 : Method of accounting-Scrap sale –Estimation of profit-Survey- Asssessee not able to reconcile the difference with books-Addition is held to be justified. [S.133A]

Addition was made on the basis of material found during course of survey and assessee was not able to reconcile same, even after having been provided an opportunity of hearing before lower authorities. (AY. 2007-08)
Jaico Automobile Engineering Company (P.) Ltd. v. DCIT (2022) 192 ITD 147 (Bang) (Trib.)

S. 145 : Method of accounting-No adverse findings by the Chartered Accountant who has audited books of account-Estimation of net profit is not justified.

Assessing Officer estimated net profit at rate of 8 per cent since assessee could not produce his books of account during course of assessment proceedings and accordingly added differential amount to total income of assessee. CIT (A) confirmed the addition. On appeal the Tribunal held that Chartered Accountant who audited books of account did not give any adverse findings regarding books of account maintained by assessee, therefore, addition made on account of estimation of net profit was not justified and had to be deleted. (AY. 2014-15)
Krishna Mohan Choursiya. v. ITO (2022) 192 ITD 214 (Indore) (Trib.)

S. 145A : Method of accounting-Valuation-Bank-Stock in trade-Valuation of unquoted securities-Order of Tribunal affirmed.

Held that the Tribunal was right in holding that the valuation of unquoted securities held as stock in trade adopted by the assessee was correct. Referred to CIT v. Nedungadi Bank Ltd (2003) 264 ITR 545 (Ker)(HC), CIT v. Lord Krishna Bankk Ltd (2011) 339 ITR 606 (Ker)(HC) (AY.2003-04) (AY. 2004-05)

CIT v. South Indian Bank Ltd. (No. 1) (2022)445 ITR 480 (Ker)(HC)
CIT v. South Indian Bank Ltd. (No. 2) (2022)445 ITR 530 / 289 Taxman 643 (Ker)(HC

S. 145A : Method of accounting – Contract receipts – Net of service tax - Exclusive method for accounting – Deduction not claimed- No disallowance can be made . [S. 43B , 145A(a)(ii)]
Held that the assessee has not claimed any deduction of the amount of unpaid service-tax, the same could not have been disallowed by triggering the provisions of s. 43B; in view of s. 145A(a)(ii) as it existed in the relevant Assessment year . 2012-13. The assessee was following accounting his contract receipts by following exclusive method (ie., net of service-tax). The assessee has not claimed the deduction of service tax .No disallowance can be made . Followed CIT v. Ovira Logistics (P) Ltd (2015) 377 ITR 129(Bom)(HC) ,CIT v. Calibre Personnel Services (P) Ltd (ITA No. 158 of 2013 dt. 2-2 -2015 .) (AY.2012-13)
Ranvir Singh Vidhuri v. Dy. CIT (2022) 216 DTR 390 /218 TTJ 941 (Raipur)(Trib)

S. 145A : Method of accounting – Valuation - Under valuation of stock- Value of opening stock lower than admitted during survey- Value of opening stock of finished goods higher than average rate- Entire exercise of valuation adhoc and without any basis- Adjustment too minor to hold assessee attempted undervaluation of stock- Additions not justified.[S.133A]
The Tribunal held that the entire exercise of adopting the average rate as on the date of survey was purely ad hoc. The adjustment made to the valuation of these goods to the extent of three per cent and eight per cent was too minor to hold that the assessee had attempted any undervaluation of stock. The addition made on account of undervaluation of stock of raw material and finished goods was to be deleted. (AY. 2013-14)

Chirai Salt (India) Pvt. Ltd v. Dy. CIT (2022)97 ITR 12 (SN) (Ahd) (Trib)

S. 145A : Method of accounting – Valuation - Closing Stock — Valuation — Jewellery business — "Last In First Out" System of Accounting — Consistently valuing its stock of jewellery under "Last In First Out" – Order of CIT(A) is affirmed . [S. 145]
If the method of valuation remained the same as it was and the Assessing Officer carried out some alterations in the method of valuation of closing stock, such alterations would have also to be given effect in the valuation of opening stock. Since the assessee had been consistently valuing its stock of jewellery in the same manner under the "last in, first out" method, which was also accepted by the Department, the Commissioner (Appeals) was fully justified in continuing with the same method of valuation. (AY. 2013-14)
ACIT v. Rajmal Manikchand and Co. (2022) 96 ITR 39 (SN) (Pune) (Trib)

S. 145A : Method of accounting – Valuation - Sales Returns — No Provision created- Sales return policy accounted based on sound accounting principles — Deletion of addition is proper .

The Tribunal held that the sales return policy of the company was in-built into the agreement or agreed by the assessee at the time of sales, that the obligation to accept sales returns arises on the date of sale. Thus, at the year end, i.e., in the month of March, the assessee was required to debit an amount towards provision for sales return to its profit and loss account against sales debited during the month of March for which the assessee takes actual sales from 1st April to 24th April which was after the balance-sheet date but before the finalisation of books of account and sales return for remaining 6 days was estimated on scientific/past experience basis. Following the practice of the first day of the next year provision, i.e., debit to profit and loss account was reversed to the profit and loss account of that year, and actual sales return was booked during the year. The sales return policy, as accounted for by the assessee, was based on sound accounting principles, and therefore, there was no reason to interfere with the findings of the Commissioner (Appeals). (AY.2014-15)

Inditex Trent Retail India Pvt. Ltd. v. Add.CIT (2022)95 ITR 102 (Delhi)(Trib)

S. 145A : Method of accounting – Valuation -Closing stock —Assessing Officer taking average mark-up of 25 Per Cent.- Directed to take average mark-up of 32 Per Cent. to arrive at cost price of closing stock as on date of search. [S. 132]

Held that on the date of search by allowing mark-up on tag price of 32 per cent. when the assessee had justified a mark-up of 32 per cent. on the tag price of closing stock held as on the date of search. The estimations made by the Assessing Officer on the difference in mark-up price of closing stock was purely on the basis of suspicion and surmises, without any evidence to suggest that the assessee had average mark-up of 25 per cent. on all goods. The Commissioner (Appeals) after considering relevant facts had rightly directed the Assessing Officer to allow average mark-up of 32 per cent. to arrive at the cost price of closing stock as on the date of search.(AY.2012-13)

ACIT v .New Saravana Stores Brahmandamai (2022)95 ITR 7 (SN)(Chennai) (Trib)

S. 145A : Method of accounting-Valuation-Valuation of closing stock-Hypothecation-No difference in quantitative details of stock furnished to bank and those maintained in books of account-Deletion of addition is held to be justified.

Held, that there was no difference between the quantitative details of the stock furnished to the bank and those maintained in the books of account. The difference in the valuation was due to the valuation in stock statement furnished to the bank on estimate basis while in the books of account the assessee valued the raw materials and consumables on cost price basis while the semi-finished and finished goods were valued on the cost of production basis. The Assessing Officer did not point out any defect in the valuation and it was also not the case of the Assessing Officer that the valuation in the books of account was not in accordance with the provisions contained in section 145A of the Act. Therefore, the deletion of the addition by the Commissioner (Appeals) was justified.(AY.2011-12)

ACIT v. Vishal Paper Industries Pvt. Ltd. (2022)93 ITR 41 (Chd) (Trib)

S.147: Reassessment-After the expiry of four years-Change of opinion-No failure to disclose material facts-Mistake of Assessing Officer-Error discovered reconsideration of same facts does not give power to the Assessing Officer to reopen the assessment-Reassessment notice and order disposal of objection was quashed-Order of High Court affirmed [S. 148, Art, 136]

The assessment was completed u/s 143(3) of the Act. Notice was issued u/s 148 of the Act . On 27-3-2019, after expiry of four years the AOrecorded reasons stateing that basis of re-opening is due to mistake of the Assessing Officer that resulted in under assessment. On writ High Court quashed the reassessment notice. On SLP by the Revenue dismissing the petition, the court held that the assessment was sought to be re-opened beyond four years. Therefore, all the conditions under section 148 of the Act for reopening the assessment beyond four years were to be satisfied. The reassessment was on a change of opinion. There were no allegations of suppression of material fact. Under the circumstances, no error had been committed by the High Court in setting aside the reopening notice under section 148 of the Act. Decision of the Bombay High Court affirmed.(AY.2012-13)

ACIT v. Ceat Ltd. (2022)449 ITR 171/ 218 DTR 441 /329 CTR 227 / (2023)) 291 Taxman 435 (SC)

Editorial: CEAT Ltd. v. ACITACIT (2023) 291 Taxman 366 (Bom.)(HC) www.itatonline.org

S.147: Reassessment-After the expiry of four years-No failure to disclose material facts-Change of opinion-Reassessment is bad in law [S. 148,, Art, 226]

On writ against reassessment notice, which was issued beyond the period of four years from the end of the relevant assessment year in a case in which the original assessment had been made after scrutiny, the reasons recorded established that the Assessing Officer was proceeding on the basis of material already on record, that there was no allegation even in the reasons recorded that there was any failure on the part of the assessee to disclose true and full material facts, that there was not a single item, no document or material which did not form part of the original assessment proceedings on the basis of which the Assessing Officer had formed a belief that the income chargeable to tax had escaped assessment, and that therefore, the notice of reassessment was not valid. Dismissing the SLP of the Revenue the Court held that from the material on record, it could be seen that the reopening of the assessment was solely on a change of opinion of the Assessing Officer. Order of High Court affirmed. High court has referred, Dr. Amin's Pathology Laboratory (2001) 252 ITR 673 (Bom) (HC), Raymond Woollen Mills Ltd v. ITO (1999) 236 ITR 34 (SC). (AY.2011-12)

PCIT v. SBI (2022)447 ITR 368/ 219 DTR 63/ 329 CTR 220/ (2022) 145 taxmann.com 33/(2023) 290 Taxman 1 (SC)

Editorial : Decision of Bombay High Court in State Bank of India v. ACIT (2019) 418 ITR 485 (Bom)(HC), affirmed.

S. 147 : Reassessment-After the expiry of four years-Share application money-Share application money-Search and Seizure-Declaration made under Income Declaration Scheme-Declaration would not provide immunity from taxation in hands of a non-declarant assessee-Reassessment notice is valid [S. 69A, 132, 132(4), 143(1),148, (IDS),Finance Act, 2016, S. 183, 192, Art, 226]-

Assessee received share application money.During search conducted at premises of assessee and its group companies, assessee's chairman disclosed statement of one, Garg Logistics Pvt Ltd about a declaration made under Income Declaration Scheme to effect that it utilized undisclosed cash for investment in share capital of assessee through various companies.. Assessing Officer issued reassessment notice On writ the High Court held that IDS and immunity was to be given in respect of declared amount hence declaration would not provide immunity from taxation in hands of a non-declarant assessee. Since reopening of assessment was based on material seized during search and correlating same with return of income of assessee, Assessing Officer had reasons to believe that income had escaped assessment and reassessment notice is valid. (AY. 2010-11)

Dy. CIT (Cent.) v. M.R. shah Logistics (P) Ltd. (2022) 287 Taxman 649 / 212 DTR 105/ 325 CTR 681 (SC)

Editorial : M.R. Shah Logistics (P.) Ltd. v. Dy. CIT (2018) 258 Taxman 103 / 172 DTR 408 / 308 CTR 493 (Guj)((HC) reversed.

S.147: Reassessment-After the expiry of four years-Order passed after pursuing details furnished-Reassessment notice is not valid [S. 143(3) 148]

Dismissing the appeal, that it could not be said that there was any suppression on the part of the assessee in disclosing true and correct facts. The reassessment proceedings were initiated beyond the period of four years. Under the circumstances, the High Court was absolutely justified in quashing the reassessment proceedings and the notice under section 148 of the Act.(AY.2012-13)

ITO v. Kayathwal Estate P. Ltd. (2022)442 ITR 507 / 213 DTR 209/ 326 CTR 494/ 287 Taxman 385 (SC)

Editorial: Decision in Kayathwal Estate P. Ltd v. ITO (2022) 442 ITR 498 (Guj) (HC) is affirmed.

S. 147 : Reassessment –Within four years-Specific queries raised by Assessing Officer and answered by assessee at time of original assessment-Change of opinion-Reassessment notice is not permissible [S. 35D, 37(1), 148 Art, 226]

On writ against the reassessment notice the single judge dismissing the assessee's writ petition against the order of the Assessing Officer disposing of the objections filed by the assessee to a notice for reopening its assessment, holding that the correctness of such an order could be scrutinised only in the reassessment proceedings and not in a writ petition. The Division Bench, on appeal, quashed the notice of reassessment and the order disposing of the assessee's objections thereto, holding that in the absence of any allegation that there was any fresh material to come to a conclusion that income had escaped assessment, the Assessing Officer could not now take a stand that the claim made by the assessee under section 37 of the Income-tax Act, 1961 which was acceded to by the Assessing Officer, was incorrect and the expenditure was in the nature referred to in section 35D of the Act, that this was a clear case of change of opinion, that since the Act does not provide for any remedy against the order disposing of the objections by the Assessing Officer, writ petitions filed were maintainable, and that the Assessing Officer, while disposing of the objections, had not touched upon the issue relating to jurisdiction. On a petition for special leave to appeal to the Supreme Court, dismissing the petition the Court held that that the reopening of the assessment had been set aside by the High Court specifically observing that the reassessment proceedings were on a change of opinion and after taking into consideration the fact that at the time of original assessment under section 143 of the Act, specific queries were raised which were answered by the assessee and, therefore, thereafter, it was not open for the Revenue to reopen the assessment proceedings on the same ground. The High Court had not committed any error.(AY.2010-11)

Dy. CIT v. Financial Software and Systems P. Ltd. (2022)447 ITR 370/ 218 DTR 489/ 329 CTR 36 (SC)

Editorial : Financial Software and Systems P. Ltd v. Dy.CIT (2022) 447 ITRR 352 (Mad)(HC)(SJ)

S. 147 : Reassessment –With in four years-Share capital-Share premium-Income from other sources-Produced evidence in support of increase of authorised share capital, share allotment and names and address of parties from whom share premium received-Change of opinion-Reassessment order quashed by the High Court is affirmed. [S. 56 (2)(viib), 148 Art, 226]

Against the order of the High Court allowing the assessee's writ petition against a notice of reassessment and the order of reassessment passed pursuant thereto, and holding that it was not permissible for an Assessing Officer to reopen the assessment based on the very same material with a view to take another view thereon without consideration of material on record on the basis of which one view has conclusively been taken by the Assessing Officer, the Department filed a petition for special leave to appeal to the Supreme Court dismissing the petition the Court held that considering the fact that earlier the Assessing Officer had called upon the assessee to produce evidence in support of increase of authorised share capital, of share allotment and names and addresses of the parties from whom share premium was received, among other things, and thereafter, the Assessing Officer had finalised the assessment and passed assessment order, the subsequent reopening could be said to be a change of opinion. Under the circumstances, the reopening had been rightly set aside by the High Court.(AY.2013-14)

ACIT. v. Kalpataru Land Pvt. Ltd. (2022)447 ITR 364/ / 218 DTR 527 / 329 CTR 224/ (2023) 290 Taxman 123 (SC)
Editorial: Order of Bombay High Court, Kalpataru Land Pvt. Ltd v. ACIT (2022) 136 taxmann.com 434 (Bom) (HC)

S. 147 : Reassessment-Two notices-Reassessment was initiated vide two notices-Limitation-Succeeding officer can continue proceedings from that stage-Issue of second notice does not signify dropping of proceedings on first notice-Reopening of assessment is valid.[S. 129, 148]

The Assessing Officer issued a notice dated March 23, 2015 to the assessee under section 148 of the Income-tax Act, 1961. At the request of the assessee, the Assessing Officer supplied the reasons for reopening. However, thereafter, the Assessing Officer was transferred and the new Assessing Officer who took charge issued another notice under section 148 of the Act dated January 18, 2016. Again, at the request of the assessee, the Assessing Officer supplied the reasons for reopening of the assessment. The assessee submitted its objections to the reopening of the assessment. The Assessing Officer rejected the objections of the assessee and thereafter, passed an order of reassessment on March 30, 2016. On a writ petition the High Court set aside the reopening of the assessment on the grounds that in view of the issuance of the second notice under section 148 of the Act dated January 18, 2016, the first notice under section 148 dated March 23, 2015 was given up, and the second notice dated January 18, 2016 was barred by limitation, that no reasons were recorded while reopening when the second show-cause notice dated January 18, 2016 was issued and further that the notice dated January 18, 2016 did not specifically mention that it was in continuation of the earlier notice dated March 23, 2015. On appeal allowing the appeal the Court held that in case of change of the Assessing Officer section 129 of the Act permits the succeeding officer to continue the earlier proceedings from the stage at which they were before the predecessor officer. The fresh show-cause notice dated January 18, 2016 was not warranted or required to be issued by the succeeding Assessing Officer. In that view of the matter, the issuance of notice dated January 18, 2016 could not be said to be tantamount to dropping the earlier show-cause notice dated March 23, 2015. The reasons to reopen the assessment had already been furnished after the first show-cause notice dated March 23, 2015. The finding recorded by the High Court that the subsequent notice dated January 18, 2016 was barred by limitation was unsustainable. The assessment order was passed on the basis of the first notice dated March 23, 2015 and not on the basis of the notice dated January 18, 2016. Under the circumstances, the High Court erred in quashing and setting aside the reopening of the assessment. The assessee was to be given liberty to file an appeal before the Commissioner (Appeals) within four weeks, subject to compliance with other requirements, and the appeal was to be considered in accordance with law and on its own merits, without raising the issue with respect to limitation. However, the assessee shall not be permitted to reagitate the question of reopening of the assessment.(AY.2008-09)

Dy. CIT v. Mastech Technologies Pvt. Ltd. (2022)449 ITR 239/ 219 DTR 378 / 329 CTR 457/145 taxmann.com 157 (2023) 290 Taxman 377 (SC)

Editorial: Mastech Technologies Pvt. Ltd v. Dy.CIT(2018) 407 ITR 242 (Delhi)(HC) reversed.

S. 147: Reassessment-Notice-Writ Petition-High Court dismisses the Petition-Not a reasoned order-Order set aside to High Court and decide a fresh on their merits. [S. 148, Art, 226]

The Assessee challenged the notice issued u/s 148 of the Act on various grounds before the High Court by filing the writ partition. The High Court dismissed the Petition stating that they were not inclined to entertain this petition. On SLP before the Supreme Court, the Supreme Court set aside the impugned order back to the High Court to pass a speaking order on all the grounds raised in the Petition and decide a fresh on their merits. (CA Nos 220 to 2203 of 2022March 28, 2022

Vishal Ashwin Patel v. ACIT (2022) 443 ITR 1/ 212 DTR 123/ 325 CTR 699/ 287 Taxman 167 (SC)

Editorial: Reversed, Vishal Ashwin Patel v. ACIT (WP Nos. 3209/2019, 3150/2019, 3208/2019 and 3137/2019 (Bom)(HC) dated January 11, 2022.

S. 147: Reassessment-Pendency of rectification proceedings-Reassessment proceedings is held to be not valid-Order of High Court set aside and the order passed by the ITAT is restored. [S. 80HHC, 143(1), 148, 154 (7)]

The assessee claimed benefit under Sec. 80 HHC for A.Y. 1995-96 for bad debt and in subsequent A.Y. claimed that the export was not realised due to which the Respondent initiated proceedings under Sec. 154. During the said proceedings, the Respondent also initiated proceedings under Sections 147, 148 of the Act and reopened assessment for A.Y.

1996-97 and passed an assessment order. On an appeal to ITAT, ITAT quashed and set aside the assessment proceedings which were re-opened under Section 148 of the Act by holding that as the proceedings under Section 154 initiated against the assessee were pending, no re-opening proceedings under Section 147/148 of the Act could have been issued/initiated and also quashed and set aside the Assessment Order for the A.Y. 1995-96. On an appeal to the High Court, the High Court passed an adverse order in favour of the Respondent and while remanding the matter back to the ITAT observed that the proceedings under Section 154 were beyond the period of limitation prescribed under Section 154(7) of the Act, the said notice was invalid and therefore, the re-opening proceedings under Section 147/148 would be maintainable. A review application by the assessee came to be dismissed by the High Court.

On an Appeal to the Supreme Court, it was opined that proceedings under Section 154 of the Act were not the subject-matter before the High Court and High Court has committed serious error in observing and holding that the notice under Section 154 was invalid as the same was beyond the period of limitation as prescribed/provided under Section 154(7) of the Act. The Supreme court thus held that during the pendency of the proceedings under Section 154 of the Act, it was not permissible on the part of the Revenue to initiate proceedings under Section 147/148 of the Act pending the proceedings under Section 154 of the Act and the impugned judgment and order passed by the High Court was quashed and set aside while the order passed by the ITAT was restored. (AY. 1995-96)

S. M. Overseas (P) Ltd v. CIT (2022) 220 DTR 465 /(2023) 330 CTR 106 (SC)

S.147: Reassessment-After the expiry of four years-Capital gains-Penny stock-No failure to disclose material facts-Reassessment notice was quashed [S. 45, 148, Art 226]

Assessee-company filed its return of income and assessment was completed u/s 143(3) of the Act. Assessing Officer issued a notice under section 147 after expiry of four years on basis ofinformation received in case of a penny stock company that the assessee had indulged in creating fictitious long-term capital gain on purchase and sale of penny stocks. The assessee filed writ petition challenging the notice issued u/s 148 of the Act. Allowing the petition the Court held that during assessment proceedings assessee had made available details related to date of purchase and sale of alleged shares and capital gain/loss made therein and Assessing Officer based on said material had conclusively taken a view Since reassessment was based on a reconsideration of material already available on record at time of original assessment proceedings, same would tantamount to a change of opinion and invalid. Accordingly the notice issued under section 148 and consequent reassessment order was quashed. Followed Crompton Greaves Ltd. v. Asstt. (2015) 229 Taxman 545/ 279 CTR 49(Bom)(HC)
(AY. 2012-13)
Infinity.com Financial Securities Ltd v. ACIT (2022) 137 taxmann.com 503 (Bom)(HC)

Editorial: SLP of Revenue dismissed, ACIT v. Infinity.com Financial Securities Ltd (2023) 290 Taxman 126 (SC)

S.147: Reassessment-After the expiry of four years-Estimate of gross profit-Reassessment notice to make addition of 5 percent of turnover instead of 1 percent addition was made in scrutiny assessment-Change of opinion-Notice and order disposing the objection was quashed. [S. 148, Art, 226]

The notice of reassessment was issued on the ground the Assessing Officer has had added back only 1 per cent. of the total turnover or sales to the income of the assessee instead of adding back 5 per cent. On writ allowing the petition the Court held that there was nothing to indicate why it should be 5 per cent. Accordingly the notice and order disposing the objection was quashed. (AY.2013-14)

Manan Trading Co. Pvt. Ltd. v. Dy. CIT (2022)449 ITR 587 (Bom)(HC)

S. 147: Reassessment-After the expiry of four years-Income from other sources-Income from house property-Query had been raised regarding loan taken and utilisation thereof during assessment proceeding and answered-Reopening of assessment to disallow interest on such loan-Change of opinion reassessment notice and objection disposing the objection was quashed [S. 24(3), 56, 148, Art, 226]

The assessment was completed u/s 143(3) of the Act. In the course of assessment proceedings specific query was raised regarding loan taken and utilisation thereof during assessment proceeding and answered. The reassessment notice was issued on the ground that the interest expense cannot be allowed as a deduction to the assessee either under section 24(*b*) or under section 57 of the Act. On writ allowing the petition the Court held that entire basis was from available records and once a conclusive view had been taken by Assessing Officer, another officer could not rely on same documents or information to take a view different from view already taken. Therefore reopening of assessment being mere change of opinion was not justified. Accordingly the notice of reassessment and order disposing the objection was quashed. (AY. 2006-07)

Nishith Madanlal Desai v.CIT (2022) 218 DTR 268 / 139 Taxman 52 (Bom)(HC)

S. 147: Reassessment-After the expiry of four years-Capital gains-No failure to disclose material facts-Reassessment notice and order disposing the objection was quashed [S. 2(47)(v), 45, 148, Art, 226]

The petitioner filed the writ against the disposal of objection against reassessment notice. Allowing the petition the Court held that there was no failure to disclose the material facts. the Court held that theassessing officer has the power to reopen the assessment provided there is tangible material to conclude that there is escapement of income from assessment and further, the reasons must have a live link with the formation of the belief. A mere change in opinion cannot be a reason to reopen. This decision holds that there is a conceptual difference between power to review and power to reassess and that the assessing officer has no power to simply review (AY. 2010-11)

Nirupa Udhav Pawar (Smt.) v ACIT (2022) 328 CTR 771 / 214 DTR 427 (Bom)(HC)

S.147: Reassessment-After the expiry of four years-No failure to disclose material facts-No new information-Reassessment notice and order disposing objection was quashed [S. 80IA, 148, Art, 226]

Against the disposal of objection the assessee filed writ before the High Court. Allowing the petition the Court held that in the present case, the petitioner had truly and fully disclosed all material facts necessary for the purpose of assessment. They were carefully scrutinized and figures of income as well as deduction were carefully reworked by the Assessing Officer. In fact, in the reasons for reopening, there is not even a whisper as to what was not disclosed. Accordingly this is not a case where the assessment is sought to be reopened on the reasonable belief that income had escaped assessment on account of failure of assessee to disclose truly and fully all material facts that were necessary for computation of income but this is a case wherein the assessment sought to be reopened on account of change of opinion of the Assessing Officer about the manner of computation and deduction under Section 80-IA of the Act. Accordingly the same is not permissible.(AY. 2014-15)

Sun-N-Sand Hotels Pvt Ltd v. NFAC(2022) 215 DTR 220 (Bom)(HC)

S.147: Reassessment-After the expiry of four years-Franchise fee-Capital or revenue-No failure to disclose material facts-Specific query in the course of original assessment proceedings-Reassessment notice and order disposing the objection was quashed [S. 37(1), 148, Art, 226]

The assessment was completed u/s 143(3) of the Act. Notice for reassessment was issued on the ground thatnon consideration of exchange rate had benefited the assessee to the extent of Rs.33,80,77,707/-which has not been offered by the assessee to tax. Hence, there is an escapement of income. The objection of the assessee was dismissed. On writ allowing the petition the Court held that hat these figures were all available before the Assessing Officer, who has considered the same and after applying his mind, passed the original assessment order. Therefore the reason to reopen on change of opinion. The Assessing Officer had all materials facts before him when he made the original assessment. When the primary facts necessary for assessment are fully and truly disclosed, the Assessing Officer is not entitled on change of opinion to commence proceedings for reassessment. Even if the Assessing Officer, who passed the assessment order, may have raised many legal inferences from the facts disclosed, on that account the Assessing Officer, who has decided to reopen assessment, is not competent to reopen assessment proceedings. it would not be open to reopen the assessment based on the very same material with a view to take another view. Accordingly the reassessment notice and order disposing the objection was quashed. (AY. 2012-13)

Knight Riders Sports Pvt.Ltd v. Dy.CIT (2022) 329 CTR 779/ 220 DTR 190 (Bom)(HC)

S. 147 : Reassessment-After the expiry of four years-Change of opinion-Revenue audit-Insurance business-Income from dividend from equity shares and interest from tax savings bonds-Reassessment notice and order disposing objection was quashed. [S. 10,44, 148, Art, 226]

The reassessment notice was issued on the ground that the assessee was wrongly allowed the exemption under section 10 of the Act in respect of income from dividend from equity shares and interest from tax savings bonds. The petitioner challenged the said notice and order disposing the objection**.** Allowing the petition the Court held that in the assessment order dated 18th February, 2016 it is recorded that petitioner has also referred to the judgment of this court in General Insurance Corporation of India v. DCIT (2021) 131 taxmann.com 327 (Bom)(HC) in which this court had occasion to consider whether the exemption granted under Section 10 of the Act were available to insurance company engaged in the business of general insurance and the court had answered in the affirmative. In fact, in the assessment order there is also reference to the portion of the judgment where the court has considered the circular issued by the CBDT to hold that the exemption granted under Section 10 of the Act were available to non life insurance business. Court also observed that the reassessment notice was issued on the basis of Revenue Audit. Notice and order disposing objection was quashed. (WP No. 1631 of 2022,dt.18.04.22) (AY. 2013-14)

ECGC Ltd. v. ACIT(Bom.)(HC) (UR)

S. 147: Reassessment-After the expiry of four years-Change of opinion-Closing stock-Notional income-No failure to disclose material facts-Notice and order rejecting the objection was quashed. [S. 22, 23, 148, Art, 226]

The assessment was completed u/s 143(3) of the Act. In the course of assessment proceedings the Assessing Officer has asked specific question regarding closing stock. After considering the reply the assessment was completed. The assessee received the notice dt 3-3-2021 proposing to reopen the assessment on the ground of not showing the notional income on stock in trade. The objection of the assessee was rejected. On writ allowing the petition the Court held that it is not a case where the assessment is sought to be reopened on the reasonable belief that income had escaped assessment on account of failure of assessee to disclose truly and fully all material facts that were necessary for computation of income but this is a case wherein the assessment sought to be reopened on account of change of opinion of the Assessing Officer about the manner of computation. In view of proviso to section 147 of the Act, the same is not permissible. Notice and order rejecting the objection was quashed**.** (WP No. 1179 of 2022 dt. 26.04.22) (AY. 2014-2015)

Harsh Kaushal Corporation v. ITO (Bom.)(HC) (UR)

S. 147: Reassessment-After the expiry of four years-Change of opinion-Audit query-Amount received towards corpus-Notice for reassessment and order disposing the objection was quashed. [S. 148, Art, 226]

Reassessment notice was issued on 31-3-2021. In the recorded reason it was stated that amount received towards corpus fund has to be treated as income of the current year. The objection of the assessee was rejected. On writ allowing the petition the Court held it is nothing but change of opinion which is not permissible in law and there was no failure on the part of petitioner to fully and truly disclose any material fact. It is settled law that where a notice under Section 143 of the Act is issued after expiry of four years after relevant assessment year, such a notice can be issued only if respondents are able to effectively demonstrate that there was failure on the part of assessee to fully and truly disclose material facts before the original Assessment order was passed. Court also observed that DCIT (E) which indicates that decision to reopen the assessment on the basis of audit query. Notice for reassessment and order disposing the objection was quashed.(WP No. 3045 of 2021, dt. 8.12.21)(AY. 2013-2014)

All India Rubber Industries Association v. ACIT (Bom.)(HC)(UR)

S. 147: Reassessment--After the expiry of four years –Change of opinion-No failure to disclose material facts-Mistake of Assessing Officer-Error discovered reconsideration of same facts does not give power to the Assessing Officer to reopen the assessment-Reassessment notice and order disposal of objection was quashed.[S.. 148, Art, 226]

The assessment was completed u/s 143(3) of the Act. Notice was issued u/s 148 of the Act on 27-3-2019, after expiry of four years. Recorded reasons stated that basis of re-opening is due to mistake of the Assessing Officer that resulted in under assessment.The objection of the assessee was rejected. On writ allowing the petition the Court held that the Hon'ble Apex Court in Indian & Eastern Newspaper Society v. CIT (1979) 119 ITR 996 (SC) has held that an error discovered on a reconsideration of the same material (and no more) does not give power to the Assessing Officer to re-open the assessment. Referred Dell India (P) Ltd v. JCIT (2021) 432 ITR 212 (FB) (Karn)(HC). Reassessment notice and order disposal of objection was quashed/ (WP. No. 3363 of 2019, dt.22-12121)(AY. 2012-2013)

CEAT Ltd. v. ACIT (2023) 291 Taxman 366 (Bom.)(HC)

Editorial: SLP of Revenue dismissed, ACIT v. CEAT Ltd (2022) 449 ITR 171/ (2023) 291 Taxman 435 (SC)

S. 147: Reassessment-After the expiry of four years-Change of opinion-No failure to disclose material facts-Notice and order rejecting the objection was quashed [S. 33AC, 80A(2), 80I, 80M, 148, Art. 226]

The assessment was completed after raising issuing specific issue of allowability of claim u/s 80I of the Act.Notice u/s 148 of the Act was issued on 21-8 2001. The Assessing Officer rejected the objections. The assessee filed writ petition. Allowing the petition the Court held that the fact that petitioner has been allowed a deduction under Section 33AC of the Act in respect of income from dividends, long term capital gains and interest cannot be the ground

for initiating proceedings under Section 148 of the Act and the exercise to reopen a validly framed assessment is merely on the basis of change of opinion by succeeding Assessing Officer and such a mere change of opinion cannot justify the exercise of jurisdiction under Section 148 of the Act. The notice and order rejecting the objection was quashed**.** **(**WP No. 2428 of 2001, 25-11-21)(AY. 1992-1993)

The Great Eastern Shipping Company Ltd v. ACIT (Bom.)(HC)(UR)

S. 147: Reassessment-After the expiry of four years-Change of opinion-Disallowance of expenditure-Exempt income-Return was not filed in pursuance of notice u/s 148 of the Act-No hard and fast rule that the assessee should first file its return pursuant to the notice-Reassessment notice was quashed. [S. 14A, R. 8D, Art, 226]]

The assessment was completed u/s 143(3) of the Act. Notice u/s 148 of the Act on 21-3-2001. The assessee filed writ petition challenging the said notice. The writ petition was admitted. When the writ petition came for final hearing the Revenue contended that the assessee has not filed the return in response of notice u/s 148 of the Act hence the writ petition deserved to be dismissed. relied on GKN Driveshafts (India) Ltd v. ITO (2003) 259 ITR 19 (SC). On behalf of the assessee it was contended that there is no hard and fast rule that the assessee should first file its return pursuant to the notice**.** Reliance was placed on the order of High Court in Caprihans India Ltd v. Traun Seem, Dy CIT (2003) 132 Taxman 123 (2004) 266 ITR 566 (Bom))(HC)). Allowing the writ petition of the assessee, the Court held that entire basis for reopening is that provisions of Section 14A and Rule 8D with regard to dividend income was attracted but while completing the scrutiny assessment no mention is made for the same. Petitioner has specifically addressed the query with regard to dividend income from which it is clear that the notice has been issued without proper jurisdiction and therefore, It is not permissible for respondents to change its opinion based on the same set of facts.(WP No. 3440 of 2019, dt 20.12.21)(AY. 2012-2013)

The Shipping Corporation of India Ltd v. ACIT(Bom.)(HC)(UR)

S. 147: Reassessment-After the expiry of four years-Change of opinion-No failure to disclose material facts-Query raised in the course of assessment proceedings-No discussion in the assessment order-Credit for tax deduction at source-Notice of reassessment and order disposing objection was quashed.[S. 148, Art, 226]

In the course of assessment proceedings specific query was raised as regards credit for tax deduction at source and the assessment was completed u/s 143(3) of the Act. The notice for reassessment was issued on 31-3-2019. Detailed reply was filed, and the order disposing the objection was passed. On writ the Court held that there has been no failure on the part of assessee to disclose and the entire re-opening is on the basis of details available on record and change of opinion. Relied on Indian and Eastern Newspaper Society v. CIT (.1979) 119 ITR 996 (SC)]. The Court also observed that when a query was raised, though there is no discussion in the assessment order in that regard, the reassessment is not permitted. Relied on Aroni Commercial Ltd v. Dy. CIT (2014) 362 ITR 403/ 44 taxmann.com 304 (Bom)(HC).Notice of reassessment and order disposing objection was quashed.(WP No. 3501 of 2019 dt. 19-1-22) (AY. 2012-2013)

Lintas India Pvt Ltd v. UOI (Bom.)(HC) (UR)

S. 147: Reassessment-After the expiry of four years-Change of opinion-No failure to disclose material facts-Demerger-Same material-Reassessment notice and order disposing the objection was quashed [S. 148, Art, 226]

Petitioner was formed as a result of demerger of the erstwhile Maharashtra State Electricity Board. The assessment was completed u/s 143(3) of the Act. The notice u/s 148 dt 30-3-2019 was issued and the order disposing the objection was passed on 22-11-2019. On writ allowing the petition the reasons recorded for re-opening, the JAO himself admits that the re-opening of assessment by him is based on the very same material which was considered by the original Assessing Officer, to take another view. Reassessment notice and order disposing the objection was quashed. Followed Crompton Greaves Ltd v.ACIT (2015) 55 taxmann.com 59 / 229 Taxman 545 (Bom)(HC)) & Ananta Landmark Pvt. Ltd. v. DCIT. (2021) 439 ITR 168/ 283 Taxman 462 (Bom)(HC) (WP No. 3573 of 2019 dt. 4-1-22) (AY. 2012-2013)

Maharashtra State Electricity Distribution Co. Ltd. v. DCIT(Bom.)(HC) (UR)

S. 147: Reassessment-After the expiry of four years-Change of opinion-Income from house property-Business income-Income from other sources-No failure to disclose fully and truly all material facts-Notice of reassessment and order disposing the objection was quashed. [S. 22, 24, 28(i) 56 Art,226]

The assessment was completed u/s 143(3) of the Act was completed on 12-3-2015. In the course of assessment proceedings notice was issued under section 142(1)) of the Act. The petitioner provided all the details as required. The rental income was assessed as income from house property and deduction was claimed u/s 24 of the Act. The notice was issued u/s 148 of the Act on the ground that since the properties were not transferred from BCCL to petitioner the income was assessable under the head business income or income from other sources and the assessee is not entitle to the deduction under section 24 of the Act. On a writ , allowing the petition the Court held that the Assessing Officer had in his possession all the primary facts and it was for him to make necessary enquiries and draw proper inference as to whether the amount was to be allowed as deduction under section 24 of the Act. When the primary facts necessary for assessment are fully and truly disclosed, the Assessing Officer is not entitled on change of opinion to commence proceedings for re-assessment. Notice of reassessment and order disposing the objection was quashed. (WP No. 2984 of 2019, dt-4-1-22) (AY. 2012-2013)

Bennett Property Holdings Company Ltd v. DCIT(Bom.)(HC) (UR)

S.147: Reassessment-After the expiry of four years-Change of opinion-When the Assessing Officer does not accept the objections filed, he shall not proceed further in the matter within a period of four weeks from the date of service of the said order of the objections on the assessee-Order was quashed-Notice and order rejecting the objection was also quashed. [S. 148, Art. 226]

The assessment was completed under section 143(3) of the Act on 22-2-2016. The notice under section 148 dated 20-3-2020 was issued on the assessee. The assessee filed its objections to the re-opening and order rejecting objections dated 24th September, 2021 was passed. Assessment order was passed on 29th September, 2021 within five days. The

assessee filed a writ petition. Allowing the petition the Court held that in Asian Paints Ltd. v. DCIT, [2008] 296 ITR 90 (Bom)(HC), in when it was held that if the Assessing Officer does not accept the objections filed, he shall not proceed further in the matter for a period of four weeks from the date of service of the said order of the objections on the assessee. This court had also directed that all Income Tax Officers concerned shall follow the proceedings strictly in all such cased of re-opening of assessment. Respondents are in breach of the order of this court. Accordingly the assessment order dated 29-9-2021 was set aside. Court also held that the re assessment notice is due to change of opinion accordingly, notice dated 20-3-2020 and order passed rejecting the objections dated 24-9 2021 also set aside. (WP. No. 7342 of 2021 dt. 19-1-2022) (AY. 2013-2014)
Nelco Ltd v. ACIT(Bom.)(HC) (UR)

S. 147: Reassessment--After the expiry of four years-Change of opinion-Amalgamation-Valuation of shares-Advertisement and Business Promotion on Medical Practioners-Reopening on same material with a view to take another view is held to be not valid-Notice and order disposing the objection was quashed. [S.37(1), 56(2)(viib), 148,Art. 226]

Petitioner is engaged in the business of manufacturing and trading in animal health care products. Pfizer Animal Pharma Private Limited, a wholly owned subsidiary of petitioner had been amalgamated with petitioner. The assessment was completed under section 143(3) of the Act. In the course of assessment proceedings the Assessing officer asked specific question on valuation of shares and also CBDT Circular dated 1-8-2012 which stated that the Indian Medical Council has imposed prohibition on Medical Practioners and their professional associates from taking gift, travel facilities, hospitality, cash, monetary grant etc. The Assessing Officer issued notice under section 148 of the Act dt 13-3 2020 and order rejecting the objections was passed on 29-9-2021. On Writ allowing the petition the Court held that two points have triggered re-opening. First is valuation of shares of petitioner which was issued to its parent company Zoetis Pharmaceutical Research P. Ltd. and second is expenses of the sum of Rs.3,99,03,688/-as cost of samples under the head Advertisement and Business Promotion. The Court held that as regards the first point, i.e., valuation of shares as per discounted cash flow method and addition under Section 56(2)(viib) of the Act is nothing but change of opinion. As regards the second point regarding cost of samples, this has also been discussed during the assessment proceeding and why the circular of CBDT dated 1st August, 2012 relied upon by the JAO is not applicable. Therefore, the Assessing Officer is not entitled on change of opinion to commence proceedings for re-assessment. Accordingly the reassessment notice and order disposing the objection was quashed. (WP.No. 21206 of 2021, dt. 11-1-22) (AY. 2013-2014)
Zoetis India v. ACIT(Bom.)(HC) (UR)

S.147: Reassessment-After the expiry of four years-Book profit-Revision was dropped-Sanction for reassessment was without application of mind-Reassessment notice and order disposing the objection was quashed. [S. 148, 151, 263, Art, 226]

The assessment of the petitioner was completed u/s 143(3)) of the Act assessing the income u/s 115JB of the Act. Commissioner issued show cause notice u/s 263 of the Act on account Diminution in the value of investment which was debit in the profit & Loss account and allowed while computing the book profit. After considering the reply the revision proceeding was dropped. Thereafter the petitioner received notice u/s 148 of the Act. One of the recorded reason was diminution in the value of investment in a subsidiary and debit in the

profit and loss account. objection of the petitioner was dismissed. On writ allowing the petition the Court held that PCIT reviewed the assessment order under Section 263 of the Act and passed an order directing the proceedings initiated under Section 263 of the Act to be dropped was passed. Later approval under Section 151 of the Act to re-open an assessment was granted. This shows total non-application of mind by the PCIT while according the approval. Relied on German Remedies Ltd. v. DCIT.(2006) 287 ITR 494 (Bom)(HC) The Court also held to grant or not to grant approval under Section 151 of the said Act to re-open an assessment is coupled with a duty and the Commissioner was duty bound to apply his mind to the proposal put up to him for approval in the light of the material relied upon by the Assessing Officer. Such power cannot be exercised casually, in a routine and perfunctory manner. Reassessment notice and order disposing the objection was quashed. (WP. No. 3555 of 2019, dt. 13-11-22 22) (AY. 2012-2013)

Godrej and Boyce Manufacturing Co. Ltd. v. ACIT(2023) **453 ITR 10 (Bom.)(HC)**

S 147: Reassessment-After the expiry of four years-Tangible material-High value transaction-Reliance on SEBI order-Reassessment proceeding is held to be valid. [S. 143(1), 148, 151, Art, 226]

The petitioner has filed the return of income showing the income of Rs 1,93, 550. The return of income has been processed u/s 143(1) of the Act. The assessment was reopened on the ground that Odyssey Securities Pvt Ltd is a scrip on which the petitioner has done high volume /value transaction. The assesseee challenged the order disposing the objection by filing writ petition. Dismissing the petition the Court held that if Assessing Officer has such tangible material, the power to reopen can be exercised. It is settled law that at the stage when the Assessing Officer reopens the assessment, it is not necessary that material before the Court should conclusively prove or establish that income has escaped assessment. We find support for this view in Export Credit Guarantee Corporation of India Ltd. v. ACIT (2013) 30 taxmann.com 211 (Bom)(HC) . (AY. 2015-2016)
Ideal Associates v. ACIT (2022) 448 ITR 260 / (2023) 146 taxmann.com 225 (Bom.)(HC)

S.147: : Reassessment-After the expiry of four years-Tribunal decided the issue in favour of assessee in earlier years-Order of Tribunal binding on the Assessing Officer though the matter is pending for admission before High Court-Reassessment notice based on the order of earlier years is bad in law-Assessing Officer cannot rely on assessment orders which are non existing because these orders have been held unjustified by the ITAT. [S. 143(1), 148, Art, 226]

The Department had made disallowances for AY 2012-13, 2013-14 and 2014-15. AO admits that the Assessment Order for A.Y. 2012-13, 2013-14 and 2014-15 on which reliance has been placed for issuance of notice under Section 148 of the Act have been held to be unjustified by the Hon'ble Income Tax Appellate Tribunal. The assessment was completed u/s 143(1) of the Act on 16-8-2016. The reassessment notice was issued on 19-3-2021. Order rejecting the objection was passed on 7-1-2022. According to AO since the department has not accepted the decision of the ITAT and has filed an appeal against these appellate orders before the Bombay High Court the issue of reassessment notice was valid. On writ against the disposal of objections allowing the petition the Court relied on the judgement of The Hon'ble Apex Court in UOI v. Kamlakshi Finance Corporation Ltd[1992 Supp (1) Supreme Court Cases 443 wherein the principles of judicial discipline require that the orders of the higher appellate authorities should be followed unreservedly by the subordinate authorities. The mere fact that the order of the appellate authority is not "acceptable" to the department- is in itself an objectionable phrase- that the orderis the subject matter of an appeal can be no ground for not following it unless its operation has been suspended by a competent court. If this healthy rule is not followed, the result will only be undue harassment to assessees and chaos in administration of tax laws. The court also stated that reliance on the assessment order of the previous years for re-opening itself is ill founded because these assessment orders have been set aside by the ITAT. Therefore, the Assessing Officer cannot rely on assessment orders which are, in fact, non existing because these orders have been held unjustified by the ITAT.(WP.No. 974 of 2022 dt. 3-3-2022) (AY. 2015-16)
J.K.Trust v. ACIT (Bom)(HC) (UR)

S.147: Reassessment-After the expiry of four years-Deemed dividend-No failure to disclose truly and fully material facts-AO Referred to 68 cases laws however not stated how case laws are applicable to the facts-The Order was quashed by observing that the Faceless Assessing Officer has wasted his time in writing unsustainable order on objects. [S. 2(22)(e), 148, Art, 226]

Investments had been made by petitioner in shares of M/s. Poona Galvanizers Pvt. Ltd., (PGPL) and shares of M/s. Karamtara Fasteners Pvt. Ltd. (KFPL). DCIT Mumbai after raising a query on the share holding pattern of PGPL and KFPL from whom PGPL had taken loan; passed the assessment order taxing a sum of Rs.1,07,33,270/-as deemed dividend under

Section 2(22)(e) of the Act. PGPL challenged this order before CIT (A)). The CIT (A) held that amount of Rs.1,07,33,270/-should have been brought to tax as deemed dividend under Section 2(22)(e) of the Act in the hands of petitioner who is having substantial interest and not PGPL and KFPL. Order was up held by the Appellate Tribunal before the reasons for re-opening were recorded. Thereafter reasons were recorded and notice was issued to petitioner. On writ High Court quashed and and set aside the notice u/s. 148 of the Act dated 25th January, 2014 and the order dated 16th March,2015 (WP No. 954/2014 dt. 11 3-2022 (AY. 2008-09)

Hanwant Manbir Singh v. Dy.CIT (Bom)(HC)(UR)

S.147: Reassessment-After the expiry of four years-Change of opinion-No failure to disclose material facts-Not dealt with any of the submissions-Referred 68 case laws without stating how the case laws are applicable to the facts of the petitioner-Reassessment notice is bad in law [S. 148, Art, 226]

The issues raised in the reasons for reopening were subject matter of consideration before the Assessing Officer. On writ the Court held that when primary facts necessary for assessment are fully and truly disclosed, the Assessing Officer is not entitled to change of opinion to commence the proceedings for reassessment. The court quashed and set aside the notice and the order. Court also observed that the Assessing Officer has not dealt with any of the submissions and referred to 68 case laws without stating how the case laws are applicable to the facts of the petitioner.(WP (L) No.6861/2022 dt. 9-3-2022 (AY. 2015-16)

Hitech Corporation Ltd. (Formerly known as Hitech Plast Ltd.) v. ACIT(Bom)(HC)(UR)

S.147 : Reassessment-After the expiry of four years-No failure to disclose material facts-Queries raised during assessment proceedings-Notice is held to be bad in law and quashed.[S. 148, Rule 11UA, Art, 226]

The assessment of the petitioner was completed u/s 143(3) of the Act. During the assessment proceedings valuation report was sought and valuation by the Chartered Accountant was submitted. Notice has been issued after the expiry of four years from the end of relevant assessment year. On writ allowing the petition the Court held that the proviso to Section 147 of the Act is applicable and it is for respondents to show that there has been escapement of income due to failure on the part of the assessee to truly and fully disclose material fact required for assessment during the assessment year. During the assessment proceedings valuation report was sought and valuation by the Chartered Accountant was submitted which fact was not disputed or denied. Not only the petitioner had disclosed all information but respondent had also raised queries during the course of assessment proceedings and passed an assessment order under Section 143(3) of the Act. The Court quashed and set aside the notice issued and the order. Referred Aroni Commercial Ltd v. Dy. CIT (2014) 362 ITR 403/ 224 Taxman 13/ 44 taxmann.com 304 (Bom)(HC) (WP No. 391of 2022 dt 2-5-2022)(AY. 2014-15)

Naroli Resorts Private Limited v. ACIT (Bom)(HC)(UR)

S.147: Reassessment-After the expiry of four years-Payment of broken period interest on acquisition of securities-Revenue expenditure-Reassessment notice is not valid [S. 37(1), 148, Art, 226]

Held that reasons for reopening did not reveal any non-disclosure of facts on part of assessee during original assessment. payment of broken period interest was to be allowed as revenue expenditure. Reassessment notice is not valid. Followed American Express International Banking Corpn. v. CIT (2002)258 ITR 601 (Bom) HC) (AY 2008-09)

Dena Bank v. ACIT (2022) 287 Taxman 300 / 114 CCH 299 (Bom.)(HC)

S.147: Reassessment-After the expiry of four years-Amount payable to sundry creditors-Cessation of liability-No new information-Re assessment notice is quashed [S. 41(1), 148, Art, 226]

A notice was issued under section 148 on ground that genuineness of amount payable to sundry creditors which was pending for long period was not ascertained during original assessment and should have been treated as cessation of liability in terms of section 41(1) and to ought to be added to assessee's income. On writ the Court held that the Assessing Officer sought to reopen assessment proceedings based on same material facts which were present before him during original proceedings and there was not even a whisper of any additional information. Re assessment based on mere change of opinion is not permissible in view of proviso to section 147 of the Act. (AY. 2015-16)

Meer Gems v. ACIT (2022) 446 ITR 754/ 287 Taxman 689 (Bom.)(HC)

S.147: Reassessment-After the expiry of four years-Penny stock-Capital gains-Information from DDIT(Inv)-No allegation of failure to disclose material facts-Reassessment notice is not valid [S. 45, 68, 148, Art, 226]

Assessment was sought to be reopened in case of assessee after expiry of four years from end of relevant assessment year on ground that based on information received from DDIT (Inv), assessee had done transactions in shares of Finalysis Credit and Guarantee Company Ltd which was a penny stock company traded in Bombay Stock Exchange. Reasons also mentioned that statements of directors of Finalysis Credit and Guarantee Company Ltd had been recorded and they had admitted that company was a paper company. Investigation revealed that assessee had sold shares of Finalysis Credit and Guarantee Company Ltd worth Rs. 29.43 lakhs during relevant assessment year and therefore, assessment of said transactions had escaped assessment. On writ the Court held that there was no allegation at all in reasons recorded for reopening or in affidavit in reply that investigations revealed that assessee was mastermind or actively involved in rigging of share prices of Finalysis Credit and Guarantee Company Ltd in stock market. To a query raised under section 142(1),

assessee had also admitted that it had traded in Finalysis Credit and Guarantee Company Ltd and even provided documents thereto. Thus, issue of capital gains from shares which included shares of Finalysis Credit and Guarantee Company Ltd had been avtively considered by the Assessing Officer.Accordingly there being no failure on part of assessee to truly and fully disclose material facts, reopening of assessment after expiry of four years was not justified. (AY. 2013-14)

Rajkumar S. Singh v. ACIT (2022) 287 Taxman 296 /114 CCH 300 (Bom.) (HC)
Rita Rajkumar Singh v.ACIT ((2022) 287 Taxman 413 /114 CCH 318 (Bom.)(HC)

S.147: Reassessment-After the expiry of four years-Deduction in respect of expenditure on specified business-No failure to disclose material facts-Change of opinion-Reassessment notice is not valid [S. 35AD, 148, Art, 226]

Assessing Officer issued a notice for reassessment. In reasons recorded for reopening assessment it was stated that during scrutiny assessment assessee was allowed to claim entire deduction under section 35AD without examining conditions stipulated in provisions and assessee was not eligible to claim same and this irregular claim and allowance of deduction needed to be examined. On writ allowing the petition the Court held that there was a failure on part of Assessing Officer even to disclose what was material fact that assessee failed to disclose.It was a case of change of opinion which was not permissible. Accordingly notice issued under section 148 as well as order rejecting assessee's objections required to be quashed and set aside. (AY. 2012-13)

Rashtriya Chemicals and Fertilizers Ltd v. ACIT (2022) 287 Taxman 36/113 CCH 275 (Bom.)(HC)

S.147: Reassessment-After the expiry of four years-Sales promotion/freebees-No failure to disclose material facts-Reassessment notice is bad in law [S. 37(1),Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2022

Assessee company was engaged in business of marketing of animal health products. Assessing Officer issued a reopening notice on ground that expenditure incurred by assessee towards cost of purchase of samples for distribution under head 'advertisement and sales promotion' was in violation of provisions of Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2022 and, thus, same was not admissible under section 37(1) being expenses prohibited by law. On writ the Court held that it was evident from affidavit-in-reply that Assessing Officer had all material facts related to such expenses before him when he made original assessment. Apart from that a, specific query in respect of expenditure in question was raised at time of original assessment and same was also replied to by the assessee-There was no failure on part of assessee to truly and fully disclose all material facts necessary for purpose of assessment which were carefully scrutinized by Assessing Officer during original assessment. In reasons for reopening, there was not even a whisper as to what was not disclosed by assessee for which assessment was sought to be reopened. Reassessment notice was quashed on the ground of change of opinion. (AY. 2014-15)

Virbac Animal Health India (P) Ltd v. ACIT (2022) 287 Taxman 590 / 113 CCH 256 / (2023) 453 ITR 787 (Bom.)(HC)

S.147: Reassessment-After the expiry of four years-Audit objection-Security deposit-Interest expenditure-Change of opinion-Reassessment was quashed.[S. 37(1), 148, Art, 226]

Allowing the petition the Court held that basis for reopening assessment was merely audit objections which relied on the documents already filed before the Assessing Officer.There was no failure on part of assessee to truly and fully disclose facts, it could not be said that Assessing Officer had reasons to believe that income had escaped assessment. Reassessment was quashed. The AO cannot take recourse to reopen to remedy the error resulting from his own oversight. Rlied on Gemmeni Leather Stores v. ITO (1975) 100 ITR 1 (SC)) (AY. 2012-13)

Glaxosmithkline Pharmaceuticals Ltd. v. ACIT (2022] 286 Taxman 324 (Bom)(HC)

S.147: Reassessment-After the expiry of four years-Provision for sales and operating expenses-No failure to disclose material facts-Reassessment notice was not valid [S. 148, Art, 226]

Allowing the petition the Court held that the assessee provided all details called for including breakup of various expenses like provisions for sales return and other operating expenses and assessment was completed accordingly. All points, which had been raised in reasons for reopening, were raised by Assessing Officer during original assessment proceedings and all documents and details were provided to Assessing Officer.Reassessment notice was not valid. Relied on 3I Infotech Ltd v. ACIT (2010) 329 ITR 257 (Bom)(HC), Cromton Greaves Ltd v. ACIT (2015) 55 taxmann.com 59 / 229 Taxman 545/ 275 CTR 49 (Bom)(HC) (AY. 2012-13)

Halite Personal Care India (P.) Ltd. v.DCIT (2022) 448 ITR 303/ 218 DTR 531/ 286 Taxman 464 (Bom)(HC)

S.147: Reassessment-After the expiry of four years-Rate of depreciation-Software licence-Audit information-Reassessment notice was quashed [S. 32, 148, Art, 226]

Reassessment notice was issued on the ground that excess claim of depreciation was made by assessee at rate of 60 per cent in respect of software licences instead of 25 per cent. On writ allowing the petition the Court held that identical objection, as raised in reasons for reopening, was raised and communicated to assessee by way of audit queries and assessee had provided clarifications to Assessing Officer. Reassessment notice was quashed.Relied on Indian and Eastern Newspaper Society v. CIT (1979) 119 ITR 996 (SC), ICICI Home Finance Co. Ltd. v. ACIT (2012) 25 taxmann. Com 241 (Bom.)(HC), IL & FS Investment Managers Ltd. v. ITO (2008) 298 ITR 32 (Bom.) (HC)) and Jagat Jayantilal Parikh v. DCIT (2013) 32 taxmann.com 161 (Guj.).(HC) (AY. 2012-13)

Maharashtra State Power Generation Company Ltd. v. DCIT (2022) 286 Taxman 333 (Bom)(HC)

S.147: Reassessment-After the expiry of four years-Business expenditure-Leased assets-Repurchase expenses-No failure to disclose material facts-Reassessment notice is not valid [S. 37(1), 148, Art, 226]

Held that during course of scrutiny assessment, Assessing Officer had made specific query as regards leased assets repurchase expenses and sought explanation and documents and in compliance thereto, assessee furnishedrequisite information and documents. Once it becomes evident that Assessing Officer had raised query and reply thereto was furnished by assessee, endeavour on part of revenue to reopen assessment is fraught with two infirmities, namely, it cannot be said that income escaped assessment on account of failure to make a true and full disclosure of material facts (in cases where proviso operates) and reassessment would then fall in realm of mere change of opinion on basis of very same material, which is legally impermissible. Reassessment notice was quashed. (AY. 2006-07)

Mangalore Refinery and Petrochemicals Ltd. v. DCIT (2022) 286 Taxman 607 (Bom)(HC)

S.147: Reassessment-After the expiry of four years-Capital gains-No failure to disclose material facts-Reassessment notice was quashed [S. 45, 54, 148, Art, 226]

Allowing the petition the Court held that a specific query during the assessment proceedings was raised calling upon the assessee to provide a statement of capital gains and exemptions claimed along with evidence supporting the claim of exemption . The assessee provided all the details including a copy of the sale agreement. Subsequently, the assessee provided further details. Thereafter, the Assessing Officer issued a fresh notice under section 142(1) of the Income-tax Act, 1961 seeking further details on the immovable properties owned by the assessee. These details were also provided. In the assessment order, accepting the assessee's explanations and return of income, it was mentioned specifically that benefit of deductions and exemption under section 54 of the Act was one of the reasons for scrutiny under computer assisted scrutiny selection and the assessee was issued notices and the assessee also provided all details online. Therefore, all the materials relied upon by the new Assessing Officer proposing the reopening were available with the Assessing Officer when the assessment order dated December 15, 2018 was passed. Exemption had been granted. Reassessment notice was quashed. (AY.2016-17)

Gagan Omprakash Navani v. ITO (2022)445 ITR 147 (Bom)(HC)

S.147: Reassessment-After the expiry of four years-Shares or Derivatives-Reopening of Assessment has to be Tested or examined only on basis of reasons recorded and cannot be supplemented by affidavits-Notice vitiated by non-application of mind.[S. 148, 151, Art, 226]

On a writ petition challenging the notice issued under section 148 for reopening the assessment under section 147, allowing the petition the Court held that the reasons recorded did not indicate what was the trading activity during the year that the assessee was involved in or from what shares or derivatives the assessee had made huge profit. The fact that the Assessing Officer had explained in the order on the assessee's objections what was the report

and information and details on which he formed a reason to believe would be of no assistance. In the reasons recorded the information based on which the Assessing Officer had formed an opinion that there was reason to believe escapement of income, it was stated that it was related to the AY. 2015-16 but in the conclusion the AY. was mentioned as 2016-17. Therefore, the Assessing Officer himself was not clear for which year or based on information for which year he had proposed to reopen the assessment. The casual excuse of typographical error was not satisfactory. If only the Additional Commissioner, who had recommended the proposal of the Assessing Officer or the recommending authority himself, while according approval under section 151 that the case was fit for issue of notice under section 148 had read the reasons recorded, they would have found the errors and directed the Assessing Officer to correct the reasons or refused to grant approval on reasons fraught with errors. This also indicated non-application of mind by the recommending authority and the approving authority. The notice issued under section 148 was vitiated.ITO v. Lakhmani Mewal Das (1976) 103 ITR 437 (SC) and First source Solutions Ltd. v. ACIT (2021) 438 ITR 139 (Bom) (HC) relied on.(AY. 2014-15)

Harish Gangji Dedhiya v. UOI (2022)443 ITR 273 /140 taxmann.com 344 (Bom)(HC)

S.147: Reassessment-After the expiry of four years-Cash credits-Loan transaction accepted as genuine after enquiry-Notice on ground that loan transaction was not genuine-Not valid. [S. 132, 148, 153A, Art, 226]

Allowing the petition the Court held that all the primary facts were placed before the Assessing Officer by the assessee. The search action under section 132 of the Income-tax Act, 1961, did not reveal any tangible material qua the transaction of unsecured loan from JMPL. In fact, the assessee was called upon to explain the very transaction, in respect of which, during the course of scrutiny assessment, the then Assessing Officer had already sought information and documents. Eventually, during the course of scrutiny assessment, the Assessing Officer having been satisfied with the explanation furnished by the assessee, did not make any addition. Even in the course of the proceedings under section 153A, the Department did not claim that any incriminating material was found qua the transaction with JMPL. In this view of the matter, the reopening of the assessment on the premise that the creditor lacked the creditworthiness and thus the loan transaction was sham, was nothing but a change of opinion. The notice was not valid.(AY. 2013-14)

Regency Nirman Ltd. v. ACIT (2022)443 ITR 301 (Bom)(HC)

S.147: Reassessment-After the expiry of four years-No failure to disclose material facts-No tangible material-Change of opinion-Reassessment notice not valid [S.10A, 80HHE, 148, Art, 226]

Allowing the petition the Court held that the reasons recorded for the proposed reopening an assertion that the assessee had suppressed facts was singularly lacking. What accentuated the situation was the fact that after the initial scrutiny assessment under section 143(3) of the Act, the assessee had preferred an appeal before the Commissioner (Appeals) and thereafter pursuant to the order passed by the Commissioner (Appeals), the assessment was finalised. In this context, the assertion of the assessee that it had furnished an explanation and submitted documents in response to the multiple notices at the stage of initial assessment could not be controverted. A bare perusal of the reasons indicated that the exercise was influenced by a mere change of opinion. The notice of reassessment was not valid.(AY. 2003-04)

Tata Sons Limited v.Dy. CIT (2022) 443 ITR 282 / 140 taxmann.com 264 (Bom) (HC)

S.147: Reassessment-After the expiry of four years-Life Insurance company-Actuarial report-No failure to disclose material facts-Reassessment is not justified [S.44, 57, 148, Art, 226]

Assessee carried on life insurance business. During assessment proceedings, it furnished its actuarial report as on 31-3-2003. Assessing Officer after examination, made an addition of surplus disclosed in actuarial valuation report .The Assessing Officer reopened assessment on ground that assessee did not offer incremental negative reserves as a part of surplus arrived at as per actuarial valuation, for purpose of computing income from insurance business which had resulted in income escaping assessment. CIT(A) allowed the appeal. Tribunal affirmed the order of the CIT(A). On appeal by the revenue dismissing the appeal the Tribunal held that the Assessing Officer completed re-assessment disallowing provision for negative reserve. Since negative reserve was part of actuarial report furnished by assessee during original assessment proceedings and Assessing Officer while completing assessment had considered said report, it could not be said that there was non-disclosure of material facts relevant for assessment.Reopening of assessment is not valid. (AY. 2003-04)

CIT v. SBI Life Insurance Company Ltd (2022) 447 ITR 639/ 285 Taxman 705 (Bom)(HC)

S.147: Reassessment-After the expiry of four years-Sub contract and sub-contract-During assessment proceedings all details are furnished-Survey-Reasons cannot be improved or supplemented-Re assessment notice is not valid.[S. 133A, 148, Art, 226]

Re assessment notice was issued on 31 st March 2019 to reopen assessment. Basis, for reopening was that certain companies were accepting contracts and were sub-contracting those contracts to other entities and revenue came to know about this based on a survey under section 133A on one SEPCL.Assessing Officer had recorded reasons that a contract was received by assessee from one SECPL during relevant assessment year. On writ the Court held that during assessment proceedings, on being asked about details of sub-contract given, assessee had given entire details required by Assessing Officer therefore, it could not be said that there was non-disclosure on part of assessee. Re assessment notice is held to be bad in law. Relied on First Source Solutions Limited v. ACIT,(2021) 438 ITR 139 (Bom),(HC) CTIT v. Shodiman Investment P. Ltd, (2018) 93 taxmann.com 153 / (2020)) 422 ITR 337 (Bom)(HC) Sabh Infrastructure Limited v. ACIT, (2017) 398 ITR 198 (Delhi).(HC), Crompton Greaves Ltd v. ACIT (2015)) 55 taxmann.com 59 / 229 Taxman 545 (Bom)(HC) (AY. 2012-13)

Patel Engineering Ltd. v. Dy. CIT (2022) 446 ITR 728 / 285 Taxman 655 / 210 DTR 185 (Bom) (HC)

S. 147 : Reassessment-After the expiry of four years-Certificate was issued for nil TDS-Reassessment notice on the ground that misrepresentation of facts-Agreement was made available when the certificate was issued-Reassessment is held to be not justified.[S. 148, 197, Art, 226]

Assessee, an Indian company and subsidiary of foreign company (Reuters UK), was engaged in distribution of their products to subscribers in India. Assessee requested for no-objection certificate as regards payment made to Reuters UK without deduction of tax at source and assessee was granted with same. Almost after six years, reassessment was initiated on ground that assessee had evaded payment of tax by procuring nil TDS certificate by misrepresenting facts and, thus, payment made by assessee was subject to tax deduction at source. On writ the Court held that the reasons for reopening of assessment listed out various clauses of agreement between assessee and Reuters UK and said agreement was made available to Assessing Officer by assessee when it applied for no-objection certificate. On facts, reasons recorded for reopening could not be accepted and reassessment was unjustified. (AY. 1996-97, 1997-98)

Reuters India (P.) Ltd. v. Dy.CIT (2022) 285 taxman 557 (Bom)(HC)

S.147: Reassessment-After the expiry of four years-Cash credits-Information received from Director (Investigation) –Bogus suspicious transaction-Fishing enquiry-Reassessment notice is quashed. [S. 68, 148, Art, 226]

Assessee-company filed its return of income which was accepted and an assessment was completed. The notice was issued for reopening of assessment. In the reasons recorded merely indicated information received from Director (Investigation) about certain entity entering into suspicious transactions and material was not further linked by any reason to come to conclusion that assessee had indulged in any activity which could give rise to reason to believe on part of Assessing Officer that income of assessee chargeable to tax had escaped assessment. On writ the court held that this was an evidence of a fishing enquiry and not a reasonable belief that income chargeable to tax had escaped assessment. Re assessment notice is quashed.. (AY. 2012-13)

Reynolds Shirting Ltd. v. ACIT (2022)285 Taxman 554 (Bom) (HC)

S.147: Reassessment-After the expiry of four years-Alleged excess deduction-Basis of information and material already on record-Re assessment notice was quashed. [S. 80IB, 80IC, Art, 226]

The assessment of the petitioner was completed u/s 143(3) of the Act. allowing the deduction u/s 80IB and 80IC of the Act. The reassessment notice was issued to disallow the claim allowed in the original assessment proceedings. On writ the Court held that the Assessing

Office was acting solely on basis of information and material already on record in original assessment, hence reopening notice issued beyond period of four years was unjustified and quashed. (AY. 2011-12)

Marico Ltd v. ACIT (2021) 133 taxmann.com 121 (Bom) (HC)

Editorial: SLP of revenue is dismissed; ACIT v. Marico Ltd. (2022) 284 Taxman 365 (SC)

S.147: Reassessment-After the expiry of four years-Sale of shares-Judgement relied was existence before passing of original assessment order-Error due to oversight-Issue discussed and considered by the Assessing officer-Reassessment notice was quashed. [S. 54EC, 132, 143(3)148, 153A, Art, 226]

Allowing the petition the Court held that duty of disclosing of primary facts relevant to the decision of the question before the assessing authority lies on the assessee. The duty, however, does not extend beyond the full and true disclosure of all primary facts. Once, the primary facts are before the assessing authority, he requires no further assistance by way of disclosure. It is for him to decide what inference of facts can be reasonably drawn and what legal inference ultimately to be drawn. It is not for somebody else to tell the assessing authority the inferences whether of facts or law should be drawn. Even for a moment, it is accepted that the AO has missed to take note of the law laid down by the Punjab & Haryana Court, Sumeet Taneja v. CIT ITA.No. 293 of 2012 dt. 22-8-2013 still that cannot be a reason to take recourse to reopen to remedy the error resulting from this oversight. Reassessment notice was quashed Referred Calcutta Discount Co. Ltd. v. ITO (1961) 41 ITR 191 (SC) and Gemini Leather Stores v. ITO (1975) 100 ITR 1 (SC) 2013-14)

Ashraf Alibhai Nathani v. ACIT (2022) 211 DTR 336 (Bom) (HC)

S.147: Reassessment-After the expiry of four years-Real estate agent-ITS data-Non disclosure of turnover-Details were furnished in the scrutiny assessment-Reassessment notice was quashed. [S. 69, 148, Art, 226]

The assessment of the petitioner was completed u/s 143(3) of the Act. Reassessment notice was issued on the ground that as per ITS data petitioner sold 55 flats and no turnover related to said sales was disclosed in his income tax return. On writ allowing the petition the Court held that in scrutiny assessment petitioner had filed detailed response with respect to ITS data which was accepted by Assessing Officer. The Assessing Officer was aware of issue of ITS data and had applied his mind in regular assessment proceeding of petitioner, it would not be open for Assessing Officer to reopen assessment after a period of 4 years in absence of material to show escapement of income merely on basis of change of opinion. Notice for reopening assessment was to be quashed. (AY. 2012-13)
Monarch & Qureshi Builders v. UOI (2022) 284 Taxman 643 (Bom.)(HC)

S.147: Reassessment-After the expiry of four years-No failure to disclose material facts-The documents and submissions which were available before the AO, before passing of

the original assessment order;-Not even a whisper as to what was not disclosed-Reassessment notice was quashed [S. 148 Art, 226]

Allowing the petition the Court held that to meet a possible contention that when some account books or other evidence has been produced, there is no duty on the assessee to disclose further facts, which on due diligence, the ITO might have discovered, the legislature has put in Explanation to S. 147. The duty, however, does not extend beyond the full and truthful disclosure of all primary facts. Once all the primary facts are before the assessing authority, he requires no further assistance by way of disclosure. It is for him to decide what inferences of facts can be reasonably drawn and what legal inferences have ultimately to be drawn. It is not for somebody else-far less the assessee to tell the assessing authority what inferences, whether of facts or law, should be drawn. The Explanation 1 to S. 147 cannot enlarge the scope of the section by casting a duty on the assessee to disclose inferences, to draw the proper inferences being the duty imposed on the ITO. Therefore, it can be concluded that while the duty of the assessee is to disclose fully and truly all primary relevant facts, it does not extend beyond this. . Entire basis for proposing to reopen, as can be seen from the reasons, is on the documents and submissions which were available before the AO, before passing of the original assessment order; in the reasons for reopening, there is not even a whisper as to what was not disclosed. Reassessment notice was quashed. (AY-2013-14)

Vodafone Idea Ltd. v. ACIT (2022)211 DTR 99/ 325 CTR 241 / 285 Taxman 381 (Bom) (HC)

S.147: Reassessment-After the expiry of four years-Set off of unabsorbed depreciation or business loss-Book profit-No new Tangible material-Notice and order rejecting objection raised by Assessee was set aside. [S. 115JB, 143(3), 148, Art, 226]

Allowing the petition the Court held that a specific query was raised during the original assessment and the assessee had submitted the details of unabsorbed depreciation and business loss and also the computation of income. The assessee had also disclosed in the Schedule relating to minimum alternate tax the details of the working of book profits including specific disclosures of the amount under the head "loss brought forward or unabsorbed depreciation, whichever is less". There was no tangible material for the Assessing Officer to conclude that income had escaped assessment. The Assessing Officer had exceeded the limit of his jurisdiction to reopen the assessment in the exercise of powers under section 147 read with section 148. The notice and the order rejecting the objections were quashed and set aside.(AY.2012-13)

Dentsu Aegis Network Marketing Solutions Pvt. Ltd. v. ACIT (2022)441 ITR 41 (Bom)(HC)

S.147: Reassessment-After the expiry of four years-Transfer pricing-Notice stating that fact had not been disclosed-Mere statement that there had been failure to disclose material facts is not sufficient-Reassessment notice on the basis of change of opinion was quashed. [S. 92CA(3), 143(3), 148, Art, 226]

Allowing the petition the Court held that the assessee had in its annual report mentioned the technical know-how fee, royalty and technical assistance fee that it had paid and had also filed form 3CEB in which it had disclosed the details and description of the international transactions in respect of technical know-how and patents and regarding the royalty paid and lump-sum fees paid for the technical services. Before the original order was passed under

section 92CA(3), the Transfer Pricing Officer also had raised all these queries and had considered the royalty, technical know-how fees paid. The assessee had not only filed its account books and other evidence but those had been considered by the Transfer Pricing Officer whose order also had been considered by the Assessing Officer while passing the original order under section 143(3). Therefore, there could be nothing which had not been truly and fully disclosed. The contention of the Department that Explanation 1 to section 147 provided that production before the Assessing Officer of account books or other evidence from which material evidence could with due diligence should have been discovered by the Assessing Officer was no defence, was not tenable. The notice issued under section 148 and the reassessment order were quashed and set aside.(AY.2004-05)

Skoda Auto Volkswagen India Private Limited v. ACIT (2022)441 ITR 74 / 217 DTR 427 /134 taxmann.com 96 (Bom)(HC)

S.147: Reassessment-After the expiry of four years-Leave and licence agreement-Income from house property-Developing and running shopping mall-Income from business-No failure to disclose any material facts-Change of opinion-Notice issued by succeeding Assessing Officer-Notice was quashed.[S. 148, Art, 226]

The assessee offered the amount of licence fee as income chargeable under the head Income from house property and the common area maintenance charges as income chargeable under the head Income from business and profession. In computing the income under the head Income from business and profession the assessee reduced the expenses of maintaining the common area from the amount received by it as common area maintenance charge. The assessment was completed u/s 143(3) of the Act. Successor officer issue notice u/s 148 on the ground that amount should be taxed as income from house property.On writ allowing the petition, that the notice issued under section 148 for reopening the assessment under section 147 was based on a change of opinion and not due to any failure on the part of the assessee to fully and truly disclose all material facts. The reasons recorded did not make out any case of failure on the part of the assessee to fully and truly disclose any material fact. The figures and details were available not only in the return of income, profit and loss and balance sheet filed by the assessee but all those points were raised and considered in the original assessment order passed. The assessee had fully and truly disclosed all material facts necessary for the purpose of assessment which were wrongfully alleged as not disclosed fully and truly. Not only were the material facts disclosed by the assessee truly and fully but they were carefully scrutinized and figures of income as well as deduction were reworked carefully by the Assessing Officer. In the reasons for reopening, the Assessing Officer had relied upon the annual report and audited profit and loss account and balance-sheet and had admitted that various information/material were disclosed. But according to the new Assessing Officer, the fact that other service charges were inseparably connected to the letting out of the building of the assessee was not acceptable. When on consideration of material fact one view was exclusively taken by the Assessing Officer then it would not be permissible to reopen the assessment based on the very same material with a view to take another view.(AY.2012-13)

Upal Developers Pvt. Ltd. v. Dy. CIT (2022)441 ITR 636/ 211 DTR 196 / 134 taxmann.com 113 /285 Taxman 23 (Bom) (HC)

S.147: Reassessment-After the expiry of four years-Survey-No failure to disclose material facts –Information from DDIT-Borrowed satisfaction-Documents of report relied on must be furnished along with recorded reasons-Principle of natural justice-Judgements relied on without bringing notice to the assessee-Reasons cannot be improved or supplemented-Reassessment notice was quashed [S. 133A, 148, Art, 226]

Reassessment notice was issued after expiry of four years from the relevant assessment year on the basis of information received from DDIT. On writ allowing the petition the Court held that there was no failure to disclose material facts. Relying on the information from DDIT is borrowed satisfaction. Documents of report relied on must be furnished along with recorded reasons was not furnished. Principle of natural justice violated as Judgements relied on without bringing notice to the assessee. Reasons cannot be improved or supplemented. Reassessment notice was quashed. Relied on First Source Solutions Ltd v. ACIT(2021) 438 ITR 139 (Bom)(HC), Sabh Infrastructure Ltd v. ACIT (2017) 398 ITR 198 (Delhi)(HC) (AY. 2012-13)

Patel Engineering Ltd v. Dy.CIT(2022) 210 CTR 185 (Bom)(HC)

S. 147 : Reassessment-After the expiry of four years-Change of opinion-Capital or revenue-Advertisement and sales promotion expenses-Reassessment notice was quashed. [S. 37(1), 148 Art, 226]

Allowing the petition the Court held that in the course of original assessment proceedings the assessee has furnished party wise details advertisement and sales promotion expenses and purpose of its payment.Also furnished the details of TDS deducted on the said payments. Reassessment proceedings on basis of agreement entered in to by assessee with its dealer in subsequent year to treat the said expenditure as capital in nature is held to be without jurisdiction. The Reassessment proceedings are quashed. Followed Asian Paints Ltd v.Dy.CIT (2019)) 261 Taxman 380 (Bom)(HC) (AY. 2012-13)

Asian Paints Ltd. v. ACIT (2022) 285 Taxman 65 (Bom)(HC)

S.147: Reassessment-After the expiry of four years-Failure to deduct tax at source-Payments to stockists-No failure to disclose material facts-Reassessment notice was quashed. [S. 40(a)(ia), 148, 184H, 201(1) 201(IA), Art, 226]

The reassessment notice was issued for failure to deduct tax at source in respect of payments made to stockists. On writ allowing the petition the court held that in the original assessment proceedings issue had been discussed and the assessee has given detailed explanation. Accordingly the order and consequential notices are set aside.Followed Aroni Commercial Ltd v. Dy.CIT (2014) 362 ITR 403 (Bom) (HC) (AY. 2012-13)

Pfizer Ltd v. ACIT (2022) 285 Taxman 188/ 209 DTR 149 / 327 CTR 189 (Bom)(HC)

S.147: Reassessment-After the expiry of four years-Change of opinion-Minimum alternative tax-No whisper as to was not disclosed-Reassessment notice was quashed [S. 115JB, 148, Art, 226]

Allowing the petition the Court held that where assessee had truly and fully disclosed all material facts necessary for purpose of assessment and they were carefully considered by the Assessing Officer and in reason for reopening there was not even a whisper as to what was not disclosed, the case was of a change of opinion. The reassessment notice was quashed. (AY. 2013-14)

Vodafone Idea Ltd v. ACIT (2022) 285 Taxman 381 (Bom)(HC)

S.147: Reassessment-After the expiry of four years-Tax audit report-No new material-Notice was quashed [S.115JB, 148, Art, 226]

Allowing the petition the Court held that there was no new tangible material. The Assessing Officer issued the notice u/s 148 of the Act relying upon facts and figures available in audited account and tax audit report which were already filed along with return during original assessment. Reassessment notice was quashed. (AY. 2012-13)

Acron Developers (P) Ltd v. Dy.CIT (2020) 285 Taxman 411 (Bom)(HC)

S.147: Reassessment-After the expiry of four years-Fabricated bogus documents-After disposal of objection the assessee participated in the proceedings-Sanction was issued within few hours of receiving information cannot be held to be non application of mind –Reassessment proceedings was held to be valid. [S. 69A, 143(3), 148, 151, Art, 226]

Dismissing the petition the Court held that the reasons recorded stated that credible information was received from the Deputy Director (Inv) that a suspected person who had defrauded the Government by preparing fabricated or bogus documents and used them as genuine documents and public servants by misusing their designation under criminal conspiracy cheated the Government to cause financial loss and to the gain of a developer K.S. Chamankar Enterprises and that assessee's income had escaped assessment. The objections raised by the assessee to the reopening of the assessment were rejected. Thereafter, the assessee complied with the notice issued under section 142(1). A notice was issued proposing to add to the income of the assessee under section 69A as unexplained money an amount being transaction effected in a particular bank account between the two parties. Court also observed that there was nothing to indicate that there was non-application of mind to accord approval under section 151 by the authority. Merely because information was received at 5.47 p.m. and the notice under section 148 was issued by 10.49 p.m. that would not mean that there had been non-application of mind.(AY.2012-13)

Chhagan Chandrakant Bhujbal v. ITO (2022) 440 ITR 359 / 209 DTR 17/ 324 ITR 133/ 286 Taxman 244 (Bom) (HC)

S.147: Reassessment-After the expiry of four years-Condition Precedent-Notice not specifying failure to disclose any material facts truly and fully by assessee-Notice and subsequent order invalid. [S. 148, Art, 226]

For the AY 1998-99, the assessee filed a second revised return declaring a loss as a result of demerger of its bottling division. The AO issued notices under sections 143(2) and 142(1) along with a questionnaire. The assessee furnished the reasons for filing the revised returns of income and provided clarifications in response to the various queries raised and the balance sheet and the profit and loss account. Thereafter, the AO passed an order under section 143(3) computing the total income of the assessee at Nil after making certain disallowances and after setting off earlier years' losses. Aggrieved, the assessee filed an appeal before the Commissioner (Appeals).

The Commissioner by an order under section 263 directed the AO to pass a fresh assessment order after considering the issues identified in his order. Thereafter, an order under section 143(3) read with section 263 was passed.

After the expiry of four years the AO issued a notice under section 148 to reopen the assessment under section 147. On a writ petition:

Held, allowing the petition, that the reasons recorded for reopening of the assessment did not state that there was failure on the part of the assessee to disclose fully and truly all material facts necessary for the assessment of the AY 1998-99. The notice issued under section 148

after a period of four years for reopening the assessment under section 147 and the consequential order passed were quashed and set aside. (AY. 1998-99)
Coca-Cola India P. Ltd. v. DCIT (2022) 440 ITR 20 (Bom) (HC)

S.147: Reassessment-After the expiry of four years-Change of opinion-Subsidy-Provision for expenses-Query raised during assessment proceedings-Reply filed-It is not necessary that the assessment order should contain reference or discussion in the assessment order-Order was quashed-Court observed that the order of disposal of objections was of 21 pages and referring 68 case laws without referring the issue under consideration-Faceless Assessing Officer has only wasted his time in writing unsustainable order on objections. [S. 4, 37(1)), 143(3), 148,Art, 226]

The assessment of the petitioner was completed under section 143(3) of the Act. In the course of assessment proceedings specific question was raised as regards taxability of the subsidy and provision for expenses. After considering the reply the Assessing Officer has accepted the contention of the petitioner and partly disallowed the provision for expenses. Against the order of the Assessing Officer the petitioner had preferred an appeal before the CIT (A) which is pending for disposal. After the expiry of four years the Assessing Officer issued a notice for reassessment and in the recorded reasons the Assessing Officer proposed to make addition as regards the subsidy and provision for expenses. The petitioner has filed detailed reply objecting to proposed reassessment, however the assessing Officer rejected the objection without discussing any of the contention of the petitioner. In the rejection order the Assessing Officer quoted 68 case laws. On writ allowing the petition the Court held that, it is not necessary that the assessment order should contain reference or discussion in the assessment order. Court also observed that the order of disposal of objections in to 21 pages and referring 68 case laws without referring the issue under consideration the Faceless Assessing Officer has only wasted his time in writing unsustainable order on objections. The order was quashed. (WP(L) No 6861 of 2022 dt 9-3-2022) (AY. 2015-16)

Hitech Corporation Ltd (Formerly Known as Hitesh Plast Ltd) v. ACIT (Bom)(HC) www.itatonline.org.

S.147: Reassessment-After the expiry of four years-Interest and property tax paid subsequently after slump sale-Claimed as deduction in the year of payment-Amount disclosed in tax audit report relying on case law-Reassessment notice for incorrect claim-Change of opinion-Reassessment notice was quashed. [S. 43B, 44AB, 148, Art, 226]

In the Form No 3CD tax audit report the assessee has mentioned that the deduction on account of interest and tax liability was claimed u/s 43B of the Act, based on the case law CIT v. Diza Electricals (1996) 222 ITR 156 (Ker)(HC). The assessment was completed u/s. 143(3) of the Act. There was no discussion in the assessment order. The Reassessment notice

was issued after the expiry of four years on the ground that the claim was incorrect which was discovered subsequent to the original assessment hence there is no change of opinion. Allowing the petition the Court held that the assessee has disclosed in the form 3CD which is mandatory obligation to furnish with its return of income the report of Auditor which was fulfilled by the assessee. The reassessment notice was quashed. Relied on 3i Infotech Ltd v. ACIT (2010) 329 ITR 257/ 192 Taxman 137 (Bom)(HC), Ranbaxy Laboratories Ltd v. Dy CIT (2013) 351 ITR 23 / 30 taxmann.com 410 (Delhi)(HC) (AY. 2014-2015)

E-Land Apparel Ltd v. ACIT(2023) 453 ITR 16 (Bom) (HC)

S.147: Reassessment-After the expiry of four years-No failure to disclose material facts-Information based on search of third party-Reason recorded not indicated anywhere or any stretch of imagination the income has escaped assessment-Non application of mind by the sanctioning authority-Observationthat the Assessing Officers should record better reasons for reopening and the Authority granting approval will also apply their mind sincerely before granting approval-Re assessment proceedings was quashed [S. 148, 151, Art 226]

The assessment was completed under section 143(3) of the Act, asking for various details. Thereafter the assessment was reopened on the ground that a large cash transaction was received. Upon consideration of submissions no addition was made. The assessment once again reopened after the expiry of four years. In the reasons supplied it was stated that on the basis of search information there was a record in regard to to accommodation entry, of which assessee is the beneficiary. A detailed objection was filed by the assessee denying most of the alleged transactions. The order disposing of the objections was passed by the Assessing Officer. Against the disposal of objection, a writ was filed. Allowing the petition, the court held that the recorded reasons does not indicate who was searched,from whom such information was received, what was the information etc. The court observed that reasons recorded have not indicated anywhere that income has escaped assessment. There was non-application of mind by the sanctioning authority. Court further observed that the Assessing Officers should record better reasons for reopening and the Authority granting the approval should also apply their mind sincerely before granting approval. Re assessment proceeding was quashed. (WP.No. 671 of 2022 dated February 08, 2022) (AY 2013-14)

Nirmal Bang Securities Pvt Ltd v. ACIT (Bom) (HC) www.itatonline.org

S.147: Reassessment-After the expiry of four years-No failure to disclose material facts-Change of opinion-Capital gains or business income-Sale of shares-Reassessment proceedings are quashed. [S. 28(i), 45, 148, 154, Art 226]

The assessment was completed under section 143(3) of the Act and thereafter the rectification order was passed under section 154 of the Act. The assessment was reopened and the order was passed. The assessment was once again reopened beyond period of four years on the ground that there has been an escapement of assessment on the ground the sale of shares of TCS Division by Petitioner was nothing but business income and therefore the profits arising

out of the sale of shares held by Petitioner in the group companies would be treated as Petitioner's income from business, and not profits arising out of sale of investment. On writ the Court held that the reasons for re-opening the assessment is based on incorrect facts or conclusions, certainly the notice issued for re-opening cannot be sustained. The notice also indicates non-application of mind where the scrutiny assessment was completed and order under section 143(3) of the Act has been passed followed by a rectification order under section 154 of the Act. Therefore, Petitioner's case has been considered at two stages, (i) When the assessment order was passed after scrutiny under section 143(3) of the Act and (ii) When an order under section 154 of the Act was passed. The Court held that the reassessment is based on change of opinion. Accordingly, the reassessment proceeding was quashed. (AY. 2005-06)

Tata Sons Limited v. Dy.CIT(2022) 286 Taxnan 587 (Bom) (HC))

S. 147: Reassessment-After the expiry of four years-Builder stock in trade-Notional income-Reassessment notice on the basis of Judgement of Delhi High Court in Ansal Housing Finance and Leasing Company Ltd (2013) 354 ITR 180 (Delhi)(HC) to assessee the income under section 23 of the Act was quashed [S. 22, 23(5), 148, Art, 226]

The assessment of the petitioner was completed u/s 143(3) of the Act. In the course of assessment proceedings specific question was raised as regards assessment of stock in trade on notional basis. The assessee has filed a detailed reply and no addition was made. The reassessment notice u/s 148 was issued after four years. In the recorded reason the Assessing Officer relied on Ansal Housing Finance and Leasing Company Ltd (2013) 354 ITR 180/ 213 Taxman 143 (Delhi) (HC) and Emtici Engineering Ltd v ACIT (1997) 58 TTJ 27 (Ahd)(Trib). The objection of the assessee was rejected by the Assessing Officer. On writ allowing the petition the Court held that when the assessment was completed the judgement of Delhi High court was available to the Assessing Officer. The reopening of assessment based on the change of opinion is held to be bad in law. Court relied on Aroni Commercial Ltd v. Dy.CIT (2014) 362 ITR 403 / 224 Taman 13 (Bom)(HC) wherein the Court held that once a query has been raised and it has been replied to, the Assessing Officer is deemed to have applied his mind and considered the same even if the that issue has not been discussed in the assessment order. (WP.No. 102 of 2022 dt 27-1-2022) (AY. 2016-17)

Lokhandwala Construction Industries v.Dy.CIT (Bom)(HC) www.itatonline.org

S. 147: Reassessment-After the expiry of four years-Revenue directed to issue guidelines for reassessment-CBDT to issue guidelines to its officers based on the Order with clear instructions which are to be strictly followed. [S. 148, 149, 150, 151, Art, 226]

The Hon'ble Bombay High Court, *inter alia* directed the revenue to adhere to certain guidelines to be followed for reassessment proceedings, they are: (a)While communicating the reasons for re-opening the assessment, a copy of the standard form/request sent by the Assessing Officer for obtaining approval of the Superior Officer should itself be provided to

the assessee. This would contain comment or endorsement of the Superior Officer with his name, designation and date.
(a). The Assessing Officer shall not merely state the reasons in the letter addressed to the assessee.
(b) If the reasons make reference to any other document or a letter or a report, such document or letter or report should be enclosed to the reasons. Such a portion as it does not bear reference to the assessee concerned could be removed.
(c) The order disposing of the objections should deal with each objection and give proper reasons for the conclusion.
(d) A personal hearing shall be given and minimum seven working days advance notice of such personal hearing shall be granted.
(e) If the Assessing Officer is going to rely on any judgment/order of any Tribunal or Court reference/ citation of these judgments/orders shall be provided along with notice for personal hearing so that the assessee will be able to deal with/distinguish these judgments/ orders.

A copy of the Order to be placed before the CBDT to issue guidelines to all its officers based on these directions with clear instructions that they shall be strictly followed. (AY. 2013-14)

Tata Capital Financial Services Limited v. ACIT(2022) 443 ITR 127 /212 DTR 55/ 325 CTR 575/ 287 Taxman 1 (Bom)(HC)

S.147: Reassessment-Two assessment years reopened-One with in four years-One after the expiry of four years-Condition Precedent-Primary facts necessary for assessment fully and truly disclosed-AO had applied his mind-Not open for the AO to reopen assessment based on very same material and to take a different view-Notices for reopening on change of opinion-Invalid [S. 148, Art, 226]
The assessee sold beauty care products and provided consultancy services. It declared income from sale of products and income from provision of services. The AO issued a notice under section 142(1) and the assessee furnished the details of advertisement expenses as sought for. Thereafter, an order under section 143(3) was passed accepting the return of income. After a period of four years, a notice under section 148 was issued to reopen the assessment under section 147 for the AY 2012-13 and within period of four years for AY 2013-14, on the ground that the advertisement and marketing expenditure incurred by the assessee was not deductible under section 37 since the assessee was prohibited from advertising under the provisions of the Indian Medical Council Act, 1956, read with Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002. The objections raised by the assessee were rejected. On writ, allowing the petitions, that in the original assessment the AO was aware of the issue of expenses incurred on advertisement and marketing by the assessee. Once he had applied his mind in the regular assessment proceedings of the assessee having incurred advertisement and marketing expenditure, it was not open for him to reopen the assessment under section 147. In the original assessment the assessee was called upon to differentiate between the nature of expenses shown under the head depreciation and amortization *vis-a-vis* advertisement and marketing expenses shown in the profit and loss account. The requisite details, including a copy of agreement, actual advertising invoices, were filed and the issue was discussed with the Assessing Officer at length before he passed the order under section 143(3). The notices under section 148 for reopening the assessment under section 147 were issued merely on change of opinion and therefore, set aside.

Followed Aroni Commercial Ltd v. Dy CIT (2014) 362 ITR 403 (Bom) (HC), Marico Ltd v. ACIT (2019) 111 taxmann.com 53 (Bom) (HC) (AY. 2012-13, 2013-14)
Rich Feel Health and Beauty Private Limited v. ITO (2022) 440 ITR 41/ 284 Taxman 286 (Bom) (HC)

S.147: Reassessment-After the expiry of four years-Change of opinion-Deduction allowed unit wise-Reasons for reassessment notice was the assessee should have been allowed deduction of 30 per cent and not 100 per cent-Reassessment notice and order disposal of objection was quashed.[S.80IC, 148, Art, 226]
Assessee had six industrial undertakings in State of Himachal Pradesh. It claimed deduction under section 80-IC in respect of its two units at rate of 100 per cent. Assessing Officer allowed the claim and passed the order u/s 143(3) of the Act. Reassessment notice was issued after expiry of four years reopened such assessment for reasons that assessee should have been allowed deduction of 30 per cent and not 100 per cent. On writ allowing the petition the Court held that in assessment order Assessing Officer had discussed on unit wise details of income and expenses claimed under various heads as 80-IC units and non 80-IC units and had also disallowed certain interest hence it was a clear case of change of opinion. Re assessment notice and order disposal of objection was quashed and set aside. Followed PCIT v. Aarham Softronics (2019) 412 ITR 623 / 261 Taxman 529 (SC) (AY. 2012-13)
Pidilite Industries Ltd v. UOI (2022) 288 Taxman 227 (Bom)(HC)

S.147: Reassessment-After the expiry of four years-Business expenditure-Reply to queries in respect of said expenses were furnished-Reassessment notice and order disposing objection was quashed [S. 37(1), 148, Art, 226]
The assessment was completed u/s 143(3) of the Act. Assessing Officer issued notice under section 148 dt. 30-3-2021 to assessee alleging that assessee had claimed excess amount of deduction on account of other expenses in profit and loss account statement. The Assessing Officer rejected the objection of the assessee. On writ it was submitted that in scrutiny assessment, assessee had submitted details of all expenses, even reply to queries in respect of other expenses, unsecured loans were also furnished.High Court quashed the Reassessment notice and order disposing objection. (AY.2013-14)
Rajeshwar Land Developers (P) Ltd v. ITO (2022) 288 Taxman 186 /(2023) 450 ITR 108 (Bom)(HC)

S.147: Reassessment-After the expiry of four years-Depreciation-Straight line method-Written down value method-No failure on part of assessee to disclose facts, reopening of assessment was not justified [S. 10A, 32, 148, Art, 226]

The assessee filed its return of income under section 139(1) declaring total income at Rs. Nil after claiming depreciation on straight line method It was stated so in notes to account in balance sheet filed along with return of income in respect of exemption under section 10A. Assessment order was passed under section 143(3), after scrutiny, was issued on 31-1-2001. Notice under section 148 was issued to assessee, proposing to reassess income of assessee. On writ allowing the petition the Court held that there was not even an assertion that there was failure on part of assessee to disclose fully and truly all material facts, which was a mandatory requirement to assume jurisdiction by Assessing Officer. Assessing Officer proceeded on ground that assessee had applied straight line method instead of written down value method in respect of depreciation which was a clear change of opinion. Accordingly there being absolutely no failure on part of assessee to disclose facts, reopening of assessment was not justified. (AY. 1998-99)(1997-98)

Sunjewels India (P) Ltd v. ITO (2022) 288 Taxman 562(Bom)(HC)
Sunjewels India (P) Ltd v. ITO (2022) 288 Taxman 591 (Bom)(HC)

S.147: Reassessment-After the expiry of four years-Business income-Unsecured non-convertible redeemable debentures was actually sale consideration received in respect of sale of flats and that had escaped assessment-Issue of debentures had been a subject of consideration of assessment proceedings-Reopening on same basis was not permissible.[S. 28(1), 148, Art, 226]

Assessee-company was engaged in business of construction of residential building. It recouped cost of construction of building by issue of redeemable debentures to shareholders. During assessment proceedings, assessee explained how it issued further debentures for covering cost of construction. Assessing Officer completed assessment accepting income as per return of income filed by assessee. Assessing Officer issued notice u/s 148 of Act on the ground that amount which assessee received against new unsecured non-convertible redeemable debentures was actually sale consideration received in respect of sale of flats and that had escaped assessment. On writ allowing the petition the Court held since issue of debentures had been a subject of consideration of assessment proceedings, reopening of assessment after four years on same basis relying on same primary facts disclosed was not permissible. Reassessment notice and order disposing the objection was quashed. (AY. 2001-02)

Tanna Builders Ltd v. ITO (2022) 288 Taxman 300 (Bom)(HC)

S.147: Reassessment-After the expiry of four years-Information from DDIT (Inv)-Accommodation entries-Bogus capital gains and losses-Penny stock scrips-Original assessment proceedings transaction was treated as bonafide-Even if it was assumed that Assessing Officer had committed a mistake, still, assessment could not have been reopened to remedy error-Reassessment notice and order disposing the objection was quashed [S. 45,69, 148, Art, 226]

Assessment was sought to be reopened on ground that information was received from office of DDIT (Inv) that company JRI Industries was involved in providing accommodation entries in form of bogus long term capital gains/short term capital losses in penny stock scrips to beneficiaries by manipulating stock market and assessee was one of persons/beneficiaries who had traded in scrip of JRI Industries and entire consideration from sale of shares of said scrip remained unexplained. The objection for recorded reason was dismissed. On writ allowing the petition the Court held that in assessment proceedings, assessee had furnished particulars of transaction in JRI Industries and same was treated by Assessing Officer as bona fide transactions. Even if Assessing Officer had no means to know that transactions in scrip of JRI Industries were not bona fide and even if it was assumed that Assessing Officer had committed a mistake, still, assessment could not have been reopened to remedy error. Reassessment proceedings was quashed and set aside. Referred Gemini leather Stores v. ITO (1975) 100 ITR 1 (SC) (AY. 2013-14)

Sunil Hanskrishna Khanna v. ACIT (2022) 139 taxmann.com 555/ 288 Taxman 46 (Bom)(HC)

S.147: Reassessment-After the expiry of four years-Penny stock-Information from investigation wing-Fresh material-No change of opinion-Reassessment notice is valid [S. 148,151, Art, 226]

Dismissing the petition the Court held that, despite of lapse of four years of a scrutiny assessment, there is fresh tangible material in the form of information of beneficiaries of bogus LTCL / STCL report prepared by the Dy. DIT (Inv) reveals that penny stock whose share price was manipulated in trade by way of a complex web of pre-arranged or artificial transactions to book long-term/short-term capital gain/loss to the beneficiaries. Assessee was involved in the trade of penny stock and had sold shares. The reassessment notice was held to be valid. (AY.2013-14)

Mamta Gupta v. NFAC(2022) 217 DTR 54 (Delhi)(HC)

S.147: Reassessment-After the expiry of four years-Capital gains-Excess cost of acquisition of property-Question of fact –Alternative remedy-Directed to file an appeal-Directions for maintenance of status quo subject to payment of 10 percent of demand. [S. 143(3) 147, Art, 226]

Reassessment was initiated in on the ground that during relevant year 2014-15, the assessee had sold a property for Rs. 90 lakhs and declared cost of its acquisition in year 2008-09 at 95 lakhs but relevant records showed that cost of acquisition of said property was 12.35 lakhs and, thus, income had escaped assessment. The assessment was completed by taking cost of acquisition of property at Rs. 12.35 lakhs. The assessee challengedthe said order, by filing writ petition. Single Judge dismissed the petition by observing that assessment order was passed based on records that were available and furnished to Income-tax department by assessee and he had directed assessee to work on remedy before appellate authority by filing statutory appeal. On appeal dismissing the petition the Court held that since subject matter in issue involved factual matrix which could not be decided by writ Court, assessee was to be directed to file statutory appeal before appellate authority. Directions was issued for maintenance of status quo subject to payment of 10 percent of demand**.** (AY. 2014-15)

East Coast Consultants (India) Ltd. v. DCIT (2022) 289 Taxman 36/ 217 DTR 19 /(2023) 450 ITR 114 (Mad)(HC)

Editorial: Order of single judge is affirmed, East Coast Consultants (India) Ltd. v. DCIT, W.P.No. 10699 of 2022 dt. 25-5-2022 (2022) 328 CTR 247 / (2023) 450 ITR 112 (Mad)(HC)

S.147: Reassessment-After the expiry of four years-Loan-Associated enterprise-International transaction-No failure to disclose material facts-Notice not valid and objection disposing the objection was quashed. [S. 92C, 148, Art, 226]

The reassessment notice was issued on the ground that the loan advanced to its associated enterprise (MMG) amounted to an " International transaction" which was required to be referred to the Transfer Pricing Officer (TPO) and such reference was not made during the original proceedings. The objection of the assessee was rejected by the Assessing Officer. On writ allowing the petition the Court held that when the assessee had furnished every detail as required in the prescribed form, and the Assessing Officer in the proceedings under

section 143(2) of the Act examined the very transaction, the Department could not dispute that the value of the loans and advances would be within the knowledge of the Assessing Officer. In fact, it was obvious on a perusal of the assessment order that the interest on this very loans and advances was brought to tax with reference to the value of this transaction. Therefore, it would be reasonable to opine that the Assessing Officer, upon examination of the transaction, found no prima facie reason for referring the loan transaction to the Transfer Pricing Officer. The Department did not dispute that both the source of income and the subject investment were mentioned in the books of account, and the Department also did not contend that the assessee did not have the necessary resources to make such investment. The Department had failed to establish that the assessee had either omitted or failed to disclose material circumstances or that there was reason even for a subjective belief that any income had escaped tax. The notice of reassessment and consequent proceedings were held to be invalid.(AY.2012-13)

Bharat Fritz Werner Ltd. v. Dy. CIT (2022)449 ITR 631 (Karn)(HC)

S. 147: Reassessment-After the expiry of four years-Employee benefit expenses-The successor officer had not come into possession of any other information to indicate escapement of income but merely relied upon the methodology adopted by the assessee to apprehend escapement of tax-Reassessment notice and order disposing the objection was quashed.[S. 148, Art, 226]

Allowing the petition the Court held that there was no other material that had come to the notice post original assessment prompting to take an alternate view. The successor officer had not come into possession of any other information to indicate escapement of income but merely relied upon the methodology adopted by the assessee to apprehend escapement of tax. Accordingly the notices for the assessment years 2014-15 and 2015-16 were quashed held to be not valid.(AY.2013-14 to 2015-16)(SJ)

NLC India Ltd. v. ACIT (2022)449 ITR 367 (Mad)(HC)

S. 147: Reassessment-After the expiry of four years-Limitation-Business application showing E-Mail served at 5. Am on April 1, after the expiry of time-Notice and reassessment order barred by limitation-Notice and assessment order was quashed. [S. 148, Art, 226]

The assessee filed the writ petition on the ground that notice was served beyond the limitation period hence bad in law. Allowing the petition,the Court held that the facts admitted by the respondents in the counter affidavit that the date and time of triggering of e-mail automatedly by Income Tax Business Application technical servers was on April 1, 2021 at 05:30:08 a.m., the notice issued under section 148 of the Income-tax Act, 1961 dated March 31, 2021 was without jurisdiction since it had been issued on April 1, 2021, i.e., after expiry of the limitation for issuing notice for the assessment year 2013-14. The notice dated March 31, 2021 issued under section 148 and the reassessment order dated March 31, 2022 under section 147 were quashed. Followed Daujee Abhushan Bhandr Pvt Ltd v. UOI (2022) 444 ITR 41 (All)(HC) (AY.2013-14)

Santosh Krishna (HUF) v. UOI (2022)449 ITR 457 (All)(HC)

S. 147 : Reassessment-After the expiry of four years-Sales commission-Survey-Change of opinion-Order of Tribunal quashing the reassessment was affirmed. [S. 133A, 148, 260A]

Assessing Officer reopened assessment on the ground that expenditure incurred by assessee-company, engaged in business of manufacturing and export of garments, towards sales commission were huge. On appeal the Tribunal held that reason for reopening was based on same set-of information which was available at time of original assessment proceedings, wherein no disallowance towards sales commission was made, reopening of reassessment based on mere change of opinion was invalid and not permissible. On appeal the Court held that there was no further tangible material available with Assessing Officer which warranted reopening of concluded assessment, thus, no interference was required. (AY. 2005-06)

PCIT v. Fibres and Fabrics International (P) Ltd.(2022) 139 taxmann.com 561 (Karn)(HC)

Editorial : SLP of Revenue dismissed, PCIT v. Fibres and Fabrics International (P) Ltd.(2022) 288 Taxman 20 (SC)

S.147: Reassessment-After the expiry of four years-Interest on borrowed capital-No failure to disclose material facts-Change of opinion-Reassessment notice and order disposing the objection was quashed [S. 36(1)(iii), 148, Art. 226]

Assessment was sought to be reopened in case of assessee on ground that disallowance of sum of Rs. 8.98 crore only under section 36(1)(iii) instead of Rs. 13.04 crore in assessment order had resulted in escapement of income of Rs. 4.06 crore. The objection of the assessee was rejected. On writ allowing the petition the Court held that the Assessing Officer failed to make out any case that alleged escapement of income was due to any omission or failure on part of assessee in disclosing fully and truly material facts necessary in course of regular assessment. Accordingly notice under section 148 and all subsequent proceedings on basis of aforesaid impugned notices are quashed. (AY. 2010-11)(SJ)

Tinplate Company of India Ltd v. Dy. CIT (2022) 288 Taxman 587 / 216 DTR 131/327 CTR 792 (Cal)(HC)

S.147: Reassessment-After the expiry of four years-Court cannot go into the sufficiency of reasons assigned-Writ petition was dismissed. [S. 148, Art, 226]

Assessee filed his return of income which was accepted and assessment was completed. After four years, Assessing Officer issued a reopening notice upon assessee in view of provisions of Explanation 1 to section 147 that material and books of account furnished by assessee qua relevant assessment year were insufficient despite exercise of due diligence to discover escaped income. Writ petition was filed to quash the notice. Dismissing the petition the Court held that in writ jurisdiction the court could not go into sufficiency of reasons assigned specially when case was pending before Assessing Authority to adjudicate upon in regard to alleged escapement of income for relevant year. Writ was dismissed. (AY. 2013-14)
Jiyand Ram Ahuja v. PCIT(2022) 288 Taxman 746/ 329 CTR 126 / 216 DTR 228 (MP)(HC)

S.147: Reassessment-After the expiry of four years-Long term capital gains-Bogus claim-Dead person-Reopening of assessment for same reason-Matter was remanded back to Assessing Officer to verify reasons for reopening and only if different reason was given on earlier occasion, Assessing Officer could proceed to finalize impugned reopening proceedings.[S. 10(38), 45, 148, Art, 226]

Reassessment proceedings in case of original assessee who had expired was completed.Subsequently, another reopening notice was issued against assessee on ground that he had received accommodation entries by way of bogus LTCG so as to claim exemption under section 10(38) of the Act. Petitioner i.e., assessee's son filed writ petition challenging said reopening notice on grounds that very same reason was given for reopening assessment of assessee on an earlier occasion which was already concluded, thus, impugned reopening on same reason was not permissible. Court held that the fact as to whether same reason was given by revenue to initiate reopening against assessee on an earlier occasion or not could not be decided now because no document to that effect was filed by petitioner contending that this happened during lifetime of original assessee, i.e., father of petitioner.On facts, matter was remanded back to Assessing Authority to verify reason given for reopening and only if different reason was given on earlier occasion, such reason was to be revealed to petitioner in writing and thereafter impugned reopening proceedings under section 147 could be proceeded. (AY. 2013-14).(SJ)

Krishnakumar J. Desai v. ITO (2022 288 Taxman 309 (Mad)(HC)

S.147: Reassessment-After the expiry of four years-No failure to disclose material facts-Shares received as gift and their value disclosed in original assessment-Reassessment notice is not valid [S. 52(vii) b), 148, Art, 226]
Allowing the petition the Court held that the market price of shares was irrelevant because in the reasons recorded, nowhere was it specifically alleged and established that the alleged escapement of income was by reason of the so-called non-disclosure of the share price. In any event, such an allegation even if made, would be false because the balance sheet stated the market value and consequently, on this ground also, the notice and reasons assigned by the respondents deserved to be quashed. It was therefore clear that the jurisdictional condition precedent laid down by the proviso to section 147, i. e., failure to disclose a material fact, which failure allegedly is the proximate cause of the escapement of income had not been fulfilled at all and the notice was quashed. (AY.2013-14) (SJ)

Azim Premji Trustee Co. Pvt. Ltd. v. PCIT (2022)448 ITR 356 (Karn)(HC)

S.147: Reassessment-After the expiry of four years-No failure to disclose material facts-Expenditure prohibited by law-Amounts paid by Hospitals as referrals to Doctors-Not deductible-Interpretation of taxing statutes-Interpretation taking into account intention of legislature-Reassessment notice was quashed-Notice not valid [S. 148, Art, 226]

On writ the Court held that the payment on account of "referral to doctors" was allowed under section 37(1) of the Act, by the Assessing Officer at the time of passing regular assessment order under section 143(3) of the Act, and the successor Assessing Officer had recorded that those materials upon which he had formed his opinion after the expiry of four years from the end of the relevant assessment year were available at the time of regular assessment. Since the condition precedent for invoking section 147 of the Act, for reopening of assessments after expiry of four years from the end of the relevant assessment years had not been fulfilled and the reopening of assessment was on a mere change of opinion, the notices dated July 27, 2018 under section 148 of the Act relating to the assessment years 2011-12 and 2012-13 were bad and not sustainable in law and all subsequent proceedings on the basis of these notices under section 148 of the Act, were quashed.(AY.2011-12, 2012-13) (SJ)

Peerless Hospitex Hospital and Research Center Ltd. v. PCIT (2022)447 ITR 60 / 326 CTR 249/ 213 DTR 81/ 287 Taxman 711 (Cal)(HC)

S.147: Reassessment-After the expiry of four years-Failure to disclose material facts-Audit party is entitled to point out a factual error-Subsequent discovery that facts regarding depositors was inadequate-Approval communicated to the Assessing Officer-Reassessment notice valid.[S. 148, Art, 226]

Held that the assessee did not make a true and full disclosure of all the material facts and the Assessing Officer had reason to believe that the assessee's income for the relevant year had escaped assessment. The notice dated March 22, 2020 issued under section 148 of the Act as well as all the proceedings undertaken in consequence of the notice, including the order dated January 25, 2022 passed by the National Faceless Assessment Centre rejecting the assessee's objections against the notice, did not suffer from any illegality. The notice of reassessment and consequent proceedings were valid. The audit party is entitled to point out a factual error or omission in the assessment. Reopening of the case on the basis of a factual error pointed out by the audit party is permissible under law.(AY.2013-14)

Sahara Credit Co-Operative Society Ltd. v. Dy. CIT (2022)447 ITR 597 / 141 taxmann.com 384 (All) (HC)
Editorial: Notice issued in SLP filed by assessee, Sahara Credit Cooperative Society Ltd. v. DCIT (2022) 289 Taxman 404 (SC)

S. 147 : Reassessment-After the expiry of four years-Bad debts-Change of opinion –No tangible material-Reassessment was quashed [S. 36(1)(vii), 148]

Dismissing the appeal of the Revenue the Court held that reassessment proceedings had been initiated without any tangible material evidence, unearthed subsequently, which assessee did not produce at time of original assessment under section 143(3) of the Act. Reassessment proceedings were based on change of opinion hence the Tribunal was right in allowing appeal filed by assessee. (AY. 1998-99)

CIT v. Trichy Steel Rolling Mills Ltd. (2022) 286 Taxman 595 (Mad.)(HC)

S.147: Reassessment-After the expiry of four years-Failure to disclose material facts-transfer pricing-Capital or revenue-Interest from debentures-Notice valid.[S. 148, Art, 226]

Dismissing the petition the Court held that prima facie the lack of full disclosure was apparent as the Dispute Resolution Panel had examined all three aspects, namely transfer pricing, railway siding charge (whether capital or revenue expenditure) and interest from debenture, tax impact thereof and after examining all three aspects had held in favour of the assessee only with regard to transfer pricing aspect. This could not be completely ignored. In a scrutiny assessment even the details of the immovable property said to have been purchased by the assessee writ petitioner had not been given. The notice of reassessment after four years was valid.(AY. 2013-14) (SJ)

N. Parvathi Textiles v. ITO (2022)443 ITR 293 (Mad)(HC)

S.147: Reassessment-After the expiry of four years-False disclosure is not true disclosure-Shell companies-Share premium-Share capital-Radha Fincom Pvt Ltd-Information from investigation wing-Bogus share capital-Notice valid-Writ petition was dismissed.[S. 148, Art, 226]

Held, dismissing the writ petition, that from the reasons for initiating the process of reassessment, it could be seen that the facts regarding the assessee's dealings with shell companies for routing its own unaccounted money into its books of account had not been truly and fully disclosed by the assessee during the original assessment and scrutiny assessment, though the information was embedded in the records produced before the Assessing Officer and could be found out on a detailed scrutiny and investigation. There was

prima facie material available on record before the Assessing Officer for issuing a notice for reassessment. The notice was valid. At the stage of issue of the notice of reopening of assessment the Court has only to see whether there is prima facie some material on the basis of which the Department could reopen the case. The disclosure must not only be true but must be full-. The words" fully and truly " are of significance. (A Y. 2013-14)

Ambuj Foods Pvt. Ltd. v. PRCIT.(2022) 446 ITR 294 / 287 Taxman 490/ 219 DTR 65 / 329 CTR 205 (All)(HC)

S.147: Reassessment-After the expiry of four years-Failure To Disclose material facts-Not disclosing receipts under Section 194J and reimbursement of expenses-Proper recording of satisfaction-Notice valid [S. 148, 151, 194C, 194J, Form 26AS]

Held that the assessee had not disclosed the amount of reimbursement of expenses claimed by it and the actual amount received by it towards reimbursement. It had not submitted the details of expenses incurred by it for verification during the assessment proceedings. The Assessing Officer had not formed any opinion regarding receipt of payments by the assessee under section 194J, which had not been shown in its profit and loss account, non-disclosure of the amount of reimbursement of expenses claimed by it, non-submission of the details of expenses incurred by it for verification during the assessment proceedings and non-production of any ledgers, bills and vouchers of expenses incurred on behalf of the principal companies. Reassessment notice is valid. (AY. 2013-14)

Distributors India (South) v.UOI.(NO. 1) (2022)446 ITR 163/ 288 Taxman 346 (All)(HC)

Editorial : Review petition dismissed, Distributors India (South) v. UOI.(No. 2) (2022)446 ITR 177 (All) (HC)

S.147: Reassessment-After the expiry of four years-Failure To Disclose material facts-Not disclosing receipts under Section 194J and reimbursement of expenses-Proper recording of satisfaction-Decision could not be reviewed-Notice could not be declared invalid.[S. 148,260A, Code of Civil Procedure, Order 47, Rule 1, Art, 226]

Dismissing the Review petition against the dismissal of writ petition in Distributors India (South) v.UOI.(NO. 1) (2022)446 ITR 163 (All)(HC)the Court held that (i) Review proceedings are not by way of appeal and have to be strictly confined to the scope and ambit of rule 1 of Order 47 of the Schedule to the Code of Civil Procedure, 1908. (ii) The power of review may be exercised when some mistake or error apparent on the face of the record is found. But an error on the face of record must be such an error which must strike one on merely looking at the record and would not require any long-drawn process of reasoning on points on which there may conceivably be two opinions. (iii) The power of review may not be exercised on the ground that the decision was erroneous on the merits. Court also held that by raising the question, the assessee was seeking a rehearing of the writ petition, which was not permissible in the name of review of the judgment. The court had refused to interfere with the notice under section 148 issued on the basis of the reasons recorded by the Assessing Officer that although the assessee had produced the books of account, annual report, profit and loss account and balance sheet, the requisite material facts were embedded in such a manner that the material facts could not be discovered by the Assessing Officer. This material which came to light upon investigation conducted subsequent to the passing of the

assessment order, and would certainly amount to fresh tangible material giving rise to reason to believe that certain income has escaped assessment necessitating initiation of reassessment proceedings. This finding did not suffer from any error which may be said to be apparent on the face of the record so as to warrant a review of the judgment.(AY. 2013-14)

Distributors India (South) v. UOI.(No. 2) (2022)446 ITR 177 (All) (HC)
Editorial : Distributors India (South) v.UOI.(NO. 1) (2022)446 ITR 163 /288 Taxman 346 (All)(HC)

S. 147 : Reassessment-After the expiry of four years-Notice-Order of reassessment without considering objections-Not valid.[S. 148, Art, 226]
Held that when this reason was specifically objected to, that should have been also dealt with by giving reasons as to why the objection raised by the assessee against the limitation, i. e., beyond four years up to six years had to be rejected. In the absence of any such reasons stated in the rejection order dated January 3, 2022 on the specific objection raised in this regard by the assessee, even the rejection order was not justifiable as it was not on the expected line within the meaning of the provisions of law as well as the decision made by the law courts.(AY. 2014-15) (SJ)

Renault Nissan Automotive India Pvt. Ltd. v. NEAC (2022)446 ITR 555 / 220 DTR 405 (Mad)(HC)

S.147: Reassessment-After the expiry of four years-Accommodation entries-Transactions disclosed found subsequently to be bogus-Notice valid. [S. 148, Art, 226]
Dismissing the writ petition the Court held that a perusal of the reasons recorded by the Assessing Officer showed that after considering the report of the Assistant Director of Income-tax the Assessing Officer had conducted an investigation and had gone through the Income-tax return and other related documents of the assessee and had observed that the assessee was a beneficiary of bogus accommodation entries to the tune of Rs. 6,94,540. Prior to issuing the notice in question, the Assessing Officer had not formed any opinion regarding the reasons on which the notice under section 148 of the Act had been issued and, therefore, it was not a case of "change of opinion". The notice of reassessment was valid.(AY. 2015-16)

Rochana Agarwal v. ACIT (2022)446 ITR 529/ 287 Taxman 260 / 218 DTR 501/ 329 CTR 270 (All) (HC)

S.147: Reassessment-After the expiry of four years-Failure to disclose material facts-Limited scrutiny assessment-Subsequent information by investigation wing-Bogus transaction-Accommodation entries-Reassessment notice is valid [S. 148, Art, 226]

Dismissing the petition the Court held that during the limited scrutiny assessment under section 143(3) the assessee did not make a full and true disclosure of all the material facts and, therefore, the Assessing Officer could not form any opinion regarding the fact that the

companies through which the entire share business had been dealt with by the assessee, were bogus shell companies, through which the operators provided accommodation entries for routing the unaccounted money of the assessee-company. This fact came to light only after investigation conducted subsequent to the limited scrutiny assessment and it was only thereafter that the Assessing Officer had formed an opinion in this regard. Therefore, the case would not fall in the category of change of opinion. The notice of reassessment was valid.(AY.2015-16)

Ambuja Foods Pvt. Ltd. v. PCIT (2022) 445 ITR 85 / 212 DTR 460/ 326 CTR 352 (All) (HC)

S.147: Reassessment-After the expiry of four years-Capital gains-Change of opinion-No failure to disclose material facts-Notice to withdraw the exemption is held to be not valid [S. 45, 54B, 148, Art, 226]

Allowing the petition the Court held that a bare perusal of the reasons recorded for the notice under section 148, revealed that the findings recorded by the Assessing Officer with regard to non-production of the necessary documents in support of the claim were without any basis and reflected total non-application of mind The records indicated that the details with regard to deduction under section 54B were called for and the assessee had complied with furnishing the registered sale deed and agreement of purchase along with bank particulars. Deduction had been allowed to the extent of Rs. 1,85,00,000. The attempt on the part of the Assessing Officer to reopen the assessment was nothing but a change of opinion. The notice was not valid.(AY.2012-13)

Kavitaben Jaysukhbhai Zalawadiya v. ITO (2022)445 ITR 685 (Guj)(HC)

S.147: Reassessment-After the expiry of four years-Scientific research expenditure-Petition was withdrawn [S. 35(1)(ii),148, Art, 226]

The Assessee challenged notice issued by Commissioner on ground that assumption of jurisdiction itself was bad in law, however sought permission withdrawal of this petition which was allowed and the petition was disposed of as withdrawn. (AY. 2014-15)
Joshi Technologies International Inc. v. ACIT (2022) 285 Taxman 479 (Guj)(HC)

S.147: Reassessment-After the expiry of four years-Sale of shares-Company-Failure to disclose fully and truly all material facts-Burden on Assessing Officer-[S. 56(2)(vii)(c)(ii),148, Art, 226]

The petitioner company issued shares at face value of Rs 100 per share. Details of shares were disclosed in the return of income and specific question was raised in the course of assessment proceedings. After considering the reply the assessment was completed. The reassessment notice was issued on the ground that provision of section 56(2)(vii)(c) (ii) of the Act is attracted. On writ allowing the petition the Court held that there was no reason or ground available with the Assessing Officer to issue notice under section 148. Issuance of notice to the assessee under section 148 was not in accordance with the first proviso to section 147 and therefore, unsustainable. The reason assigned for issuance of notice was that

the transfer of shares attracted the provisions of section 56(2)(vii)(c)(ii) which provision applied to individual and Hindu undivided families. The specific provision under section 56(2)(vii) relied on by the Assessing Officer for issuance of notice would not be applicable to the assessee which was a company.(AY. 2014-15)

Hariom Ingots And Power Pvt. Ltd. v. PCIT (2022) 444 ITR 306 (Chhattisgarh) (HC)

S.147: Reassessment-After the expiry of four years-Failure to disclose material facts-Exempt income-Interest payment-Question of fact-writ is not maintainable [S. 148,R. 8D, Art, 226]

Dismissing the petition the Court held, that it had been articulated in the reasons recorded for issuing the notice under section 148 that disallowance under section 14A of the Act should be made as per the methodology prescribed in rule 8D of the Income-tax Rules, 1962, and that section 14A read with rule 8D was not adhered to by the assessee in computation of income. Therefore, this matter turned on the facts. The assessee bank itself made a disallowance to the tune of over 69.23 lakhs under section 14A and in that context there was a reference to section 14A read with rule 8D. It was also made clear that disallowance of interest or expenditure ought to have been computed at a particular quantum whereas the assessee bank had disallowed an amount of only Rs. 69.23 lakhs and odd. Whether these needed to be disallowed was the point raised. All this turned heavily on the facts. In other words, these were all questions of fact. Hence a writ would not issue to quash the notice.(AY. 2014-15)(SJ)

Tamilnad Mercantile Bank Ltd. v. ACIT (2022) 444 ITR 537/ 286 Taxman 496 (Mad) (HC)

S.147: Reassessment-After the expiry of four years-Non-compete fee-Capital gains or business income-Material was available at the time of original assessment-Reassessment notice is held to be not valid [S.28(va), 45, 148, Art, 226]

Allowing the petition the court held that there was no omission or failure on part of assessee in disclosing fully and truly all relevant material facts necessary in the course of scrutiny assessment, hence the reassessment after the expiry of four years whether the tax the non-compete fee as business income or capital gains is held to be not valid. (SJ) (AY. 2012-13)

Placid Ltd v. ACIT(2022) 285 Taxman 387/ 329 CTR 795 / 220 DTR 73 (Cal)(HC)

S.147: Reassessment-After the expiry of four years-Investment in residential house-All documents pertaining to three properties were furnished in the course of original assessment proceedings-Reassessment notice was quashed [S.54F, 148, Art, 226]

Allowing the petition the Court held that the assessee had furnished all documents pertaining to three properties and Assessing Officer had originally taken note of all such purchases with reference to sale documents produced before him and made a categorical finding that assessee was entitled to claim exemption under section 54F only in respect of one property. The notice for reopening was being made based on reasoning that exemption under section 54F was required to be withdrawn for violation of condition under sub-section (2) of section 54F is change of opinion hence not justified. (AY. 2009-10)

Janaki Mohan v. ITO (2022) 284 Taxman 148 (Mad.)(HC)

S.147: Reassessment-After the expiry of four years-No tangible material-Non-Resident-Not offering the interest and bonus received on surrender of policy before maturity-Provision of Section 80CC(2)is not applicable-Reassessment was quashed [S. 10(10)(d), 80CC(2), 143(1), 148, Art, 226]

Allowing the petitions the Court held that in the absence of any new tangible material in the possession of the Assessing Officer, subsequent to the intimation under section 143(1) of the Act. Provision of Section 80CC(2)is not applicable. Reassessment was quashed. (AY.2012-13)

AMI Ashish Shah v. ITO (2022) 440 ITR 417/ 212 DTR 14/ 328 CTR 562 (Guj)(HC)

S.147: Reassessment-After the expiry of four years-Depreciation-Technical error by Auditor-Notice to withdraw the depreciation was held to be not valid [S. 32, 148, Form No 3CD, Art, 226]

Allowing the petition the Court held that the notice of reassessment was issued after four years on the basis of a technical mistake of the auditor of failing to mention the date in form 3CD at the time of submitting the report. At the relevant time, the Assessing Officer had examined the issue at length and did not disallow the depreciation claim. Reassessment notice was quashed on the ground of change of opinion. (AY.2012-13)

Baroque Pharmaceuticals Pvt. Ltd. v. ACIT (2022) 440 ITR 463 (Guj) (HC)

S.147: Reassessment-After the expiry of four years-Penny stock-No failure to disclose material facts-Reassessment notice was held to be not valid [S. 148, Art, 226]

Allowing the petition the Court held that the Assessing Officer being an expert in the subject, could have inferred from the price of purchase and sale of the scrip that the transaction was bogus. The Assessing Officer was investigating the transaction of the penny stock company KGN Enterprises Ltd. The record indicated that the report of the Securities and Exchange Board of India imposing penalty was pronounced on November 30, 2017. Therefore, it could not be said that the Revenue was unaware with regard to alleged bogus trading undertaken by Arya Global Shares and Securities Ltd and connected persons and their beneficiaries. The notice of reassessment was not valid.(AY.2011-12)

Priti Paras Savla v. ITO (2022) 440 ITR 472 (Guj)(HC)

S.147: Reassessment-After the expiry of four years-No failure to disclose material facts-Change of opinion-Notice was quashed [S. 148, Art, 226]

Allowing the appeal against the order of single judge the Court held that the details called for by the Assessing Officer, pursuant to the notice under section 142(1) and the response of the assessee to all the queries were taken note of and those details read along with the original assessment order showed that the order was not passed without due application of mind. All the materials which were the subject matter of the scrutiny assessment had been verbatim taken up on the alleged ground of reopening. That apart, these materials were culled out from the records, relating to the assessee, which were stated to be miscellaneous records. They were part of the assessment records and in the absence of any contention that the income chargeable to tax had escaped assessment on account of the reason of failure on the part of the assessee to disclose fully and truly all material facts, if a reopening was done, it amounted to a change of opinion and a review of the earlier assessment order, which was impermissible. The judge had dismissed the writ petition largely due to the stand taken by the Assessing Officer and the assessee's submissions were not considered. The order of the judge was set aside.(AY.2011-12)

N. S. Srinivasan v. ACIT (NO. 2) (2022) 440 ITR 376 / 211 DTR 316/ 325 CTR 511/284 Taxman 42 (Mad) (HC)
Editorial: decision of single judge in N. S. Srinivasan v. ACIT (NO. 1) (2022) 440 ITR 367./325 CTR 521 (Mad)(HC) is reversed

S.147: Reassessment-Order disposing the objection must be reasoned order-If the assessing Officer is going to rely on any order or Judgment of any court or Tribunal a list thereof shall also be provided to Petitioner along with a notice for personal hearing so that Petitioner can deal with/distinguish those Judgments during personal hearing-Order disposing the objection was quashed-Directed to pass speaking order giving an opportunity of personal hearing [S. 148, Art, 226]

The assessee challenged the reassessment notice and order disposing the objection. Allowing the petition the Court held that order disposing the objection must be reasoned order. If the assessing Officer is going to rely on any order or Judgment of any court or Tribunal a list thereof shall also be provided to Petitioner along with a notice for personal hearing so that Petitioner can deal with/distinguish those Judgments. Notice and order disposing the objection was quashed and directed the Assessing Officer to pass speaking order by giving an opportunity of personal hearing. (AY. 2016-17)

Mahindra CIE Automotive Ltd v. ACIT(2022) 216 DTR 457 (Bom)(HC)

S. 147 : Reassessment-Export oriented undertakings-Tribunal for the Assessment year 2006-07 has held that the assessee has not violated the conditions u/s 10B((9) of the Act-The order of Tribunal was up held by the High Court-Reassessment notice and order disposing the objections were quashed. [S. 10B(9) 148, Art, 226]

The assessment was reopened for the AY. 2003-04, 2004-05 and 2005-06, solely based on the allegations made in the AY. 2006-07 that petitioner had violated the conditions specified in Section 10B(9) of the Act during assessment year 2003-04. The assessee filed, writ petitions. Allowing the petition the Court held that the ITAT by an order dated 26th June 2013 allowed the appeal of petitioner for Assessment Year 2006-2007 holding that petitioner had not violated the conditions provided in Section 10B(9) of the Act. Appeal was also upheld by Bombay High Court. Relying on the above judgement, High court quashed the reassessment notice and order disposing the objections (WP.No. 2361 of 2010, dt. 18-2-22)(AY. 2003-2004 to 2005-2006)

Zydus Nycomed healthcare Pvt Ltd v. ITO (Bom.)(HC)(UR)

S. 147: Reassessment-Change of opinion-Order of special Bench-Carry forward and set off of business losses-Unabsorbed depreciation-Reassessment notice and order disposing the objection was quashed. [S. 32, 143(3), 147, Art, 226]

The reassessment notice was issued on the ground that as per section 72 of the Income-tax Act 1961 no business loss can be carried forward and set off against any other heads of income except income under the head of business or profession for more than eight assessment years immediately succeeding the assessment year for which the loss was first computed. Further as per section 32 of the Income-tax Act, 1961, unabsorbed depreciation can be carried forward for set off against any income under any head for a maximum period of eight years starting from AY. 1997-98.i.e. up to A.Y. 2004-05. The Assessing Officer has relied upon the order of the special Bench of the ITAT in the case of DCIT v. Times Guaranty Limited (2010) 4 ITR 210/ 131 TTJ 257 (SB)(Mum) (Trib) to form an opinion that Petitioner's income has escaped assessment. On writ the Court held that order of ITAT is dated 30th June, 2010 but the assessment of the Petitioner under section 143(3) of the Act was completed on 27th December, 2010. Therefore, this is a clear case of change of opinion. Further, the order of ITAT has not been accepted by the Gujarat High Court in General Motors India (P) Ltd. v. DCIT (2012) 25 taxmann.com 364 (Guj)(HC) and Bombay High Court in PCIT v. Supreme Petrochem Ltd (ITA No. 661 of 2017 dt. 7-6-2019 (WP. No. 1215 of 2014, dt. 10-2-22) (AY. 2008-2009)

Morarjee Textiles v.ACIT (Bom.)(HC)(UR)

S. 147 : Reassessment –With in four years-Change of opinion-Change of opinion does not constitute justification and/or reasons to believe that income chargeable to tax has escaped-Survey operation-Notice of reassessment and order disposing the objection was quashed. [S. 133-A, 147, Art. 226]

Upholding the petition of the assessee the Court held that; It is settled law that reopening cannot be based on change of opinion. Change of opinion does not constitute justification and/or reasons to believe that income chargeable to tax has escaped assessment. Court also observed that according to Respondent No.2, the Assessing Officer who passed the original assessment order should not have accepted the payment as expenditure but should have treated it as 'capital payment', which clearly shows change of opinion. Notice of reassessment and order disposing the objection was quashed. (AY. 2008-2009)

Anjis Developers Pvt. Ltd v. CIT (2023) 455 ITR 523/ 150 Taxmann.com 112 (Bom.) (HC)

Editorial : SLP of Revenue was dismissed , CIT v. Anjis Developers Pvt. Ltd (2023) 150 taxmann.com 113 / 293 Taxman 71 (SC)

S. 147: Reassessment-With in four years-Change of opinion-Revenue cannot improve upon the reasons in its oral argument or affidavit in reply-Reassessment notice and order disposing the objection was quashed. [S. 54, 148, Art. 226]

During the original assessment proceedings the Assessing Officer has asked specific query regarding sale surrender and allotment of new flats and claim u/s 54 of the Act.The assessment was completed u/s 143(3) of the Act. The Assessing Officer in the reasons for the re-opening stated that he is of the opinion that there has been escapement of income, on perusal of revised return of income filed, ledger of profit on surrender/allotment of new flats, details filed and submission made by the assessee that the transfer of capital assets has been effected by way of exchange in this case and as per assessees calculations. On writ allowing the Court held that it is clear that the primary facts necessary for assessment were also disclosed. It is settled law that the Assessing Officer is not entitled for change of opinion to commence proceedings for reassessment. It is also settled law that when on consideration of material on record, one view is conclusively taken by the Assessing Officer, it would not be open to reopen the assessment based on the very same material with a view to take another view. Court also held that Revenue cannot improve upon the reasons in its oral argument or affidavit in reply. Relied on First Source Solutions Ltd v. ACIT (2021) 438 ITR 139/ 132 taxmann.com 121(Bom)(HC). Reassessment notice and order disposing the objection was quashed. (WP. No. 3415 of 2019 dt. 25-12-21)(AY. 2014-2015)

Sanjay Devkinandan Gupta v. UOI (Bom.)(HC)(UR)

S. 147: Reassessment-Revenue Audit-Deductions on actual payment-Two Assessing Officers disagreed with the view of Revenue Audit-Reassessment notice and order disposing the objection was quashed. [S. 43B, 148, Art, 226]

The assessment was completed u/s 143(3) of the Act. The reassessment notice was issued on the basis of Revenue Audit, though the two Assessing Officers have disagreed with the view of Revenue Audit. On writ allowing the petition the Court held that the opinion rendered by the audit party in regard to the law cannot, for the purpose of such belief, add to or colour the significance of such law. Therefore, the true evaluation of the law and its bearing on the assessment must be made directly and solely by the Income Tax Officer. Notice and order rejecting the objection was quashed. Relied on Indian and Eastern Newspaper Society v**.** CIT (19979) 119 ITR 996 SC) IL and FS Investment Managers Ltd v. ITO (2009) 298 ITR 32 (Bom)(HC)(WP No. 3068 of 2019, dt 7-12-21)

Grasim Industries Ltd. v. DCIT (Bom.)(HC)(UR)

S. 147 : Reassessment –With in four years-Waiver of loan-Change of opinion-Query raised during regular assessment proceedings-Order of Tribunal affirmed. [S. 28(iv), 41 (1)) 148]

Dismissing the appeal of the Revenue the Court held that once a query had been raised with regard to a particular issue during the regular assessment proceedings it must follow that the Assessing Officer had applied his mind and taken a view in the matter as reflected in the assessment order. A query was raised by the Assessing Officer in the original assessment in respect of the waiver of loan on account of the one time settlement with the bank and the assessee had filed a detailed submission as to why the principal amount waived by the bank on account of the one time settlement was not taxable. Reassessment on a change of opinion was impermissible. No question of law arose. Referred, CIT v. Kelvinator of India Ltd (2010) 320 ITR 561 (SC), followed Aroni Commercials Ltd v.ACIT (2014) 367 ITR 405 (Bom) (HC), Marico Ltd v.ACIT(2019) 111 taxmann.com 253 / (2020) 425 ITR 177 (Bom) (HC) (ITA No.1858 of 2017 dt 26 10-2021)(AY.2007-08)

PCIT v. EPC Industries Ltd. (Bom) (HC)(UR)

S.147: Reassessment-Weighted deduction-Recorded reasons-Added in the assessment order-No failure to disclose fully and truly all material facts –Failure to deal with the objections raised by the petitioner-Reassessment notice and subsequent order was quashed [S.35(2AB), 148, Art, 226]

The petitioner had filed a Writ Petition challenging notice issued under section 148 of the Act. The primary ground that was raised is that the Assessing Officer has made a gross error in the reasons that has been recorded for reopening.In computation of income in the assessment order, Disallowance after excess weighted deduction under section 35(2AB) of the Act of Rs.31,32,852 has been added to the income of the petitioner. Therefore, the Assessing Officer has grossly erred in alleging in the reasons recorded for reopening that petitioner had claimed deduction of disallowed amount by DSIR of Rs.31.32 lakhs and that there has been failure to disclose fully and truly all the material facts. Hence, the said amount of Rs.31,32 lacs is required to be added to the income and that has escaped assessment. Allowing the petition the Court held that in the assessment order this amount is already added to the income. When these facts were brought to the notice of the Assessing Officer in the objection dated 26.11.2021 filed through petitioner's Chartered Accountant in the order dated 24.01.2022 while disposing petitioner's objection the Assessing Officer has conveniently chosen not to deal with the submissions of petitioner on merits. The court quashed and set aside the said notice dated 30 March 2021and the subsequent order dated 24 January 2022.(WP No. 1379/2022)16-3-2022)(AY.2016-17)

Connectwell Industries Pvt. Ltd v. DCIT (Bom)(HC)(UR)

S.147: Reassessment –Change of opinion-Reassessment notice and order was quashed [S. 115JB, 148, Art, 226]

In this case assessment under section 143(3) of the said Act has been completed and assessment order had been passed. The reasons recorded for reopening itself discloses that it

is nothing but change of opinion of the AO proposing to reopen. The court quashed and set aside the impugned notice and the order. (WP (L) No. 3403/2022 dt.16-3-2022.)(AY. 2017-18)

John Cockerill India Limited v. UOI (Bom)(HC)(UR)

S.147: Reassessment –Wrong recording of reasons-Recorded reasons refers sale of property –Non application of mind-Notice and order was quashed and set aside [. S148, Art, 226]

In the recorded and order it is expressly provided that the petitioner has sold and not purchased the land as mentioned in the reasons recorded for reopening. On writ the Court held that the entire basis for the Assessment Officer's opinion that there has been escapement of income from assessment is wrong. The Court quashed and set aside the notice and the order rejecting the Petitioner's objections (WP. No. 572 of 2022 dt. 3-3-2022 (AY. 2014-15)

Rajasthan Udyog and Tools Private Limited v. ACIT (Bom)(HC)(UR)

S.147: Reassessment-Change of opinion-Share capital-Share premium-Reasons that the amounts allegedly received from issuing of shares were its own funds-Reopening notice is bad on account of a change of opinion.[S. 148, Art, 226]

The Petitioner had issued share capital to its holding company at a premium. The Petitioner had filed Form 3-CEB with the Revenue along with its return of income for Assessment Year 2009-10. In its annexure to Form 3-CEB, the Petitioner had specifically declared the international transaction inter alia relating to issue of share capital to an Associated Enterprises (AE) having face value of Rs.100/-at a premium of Rs.1200/-per share. The aforesaid transaction was referred to by the AO to the TPO. TPO accepted the Petitioner's Form 3-CEB in respect of the issue of shares at premium to its AE. AO reasons that the amounts allegedly received from its AE. On writ the Court held that the notice is bad on account of change of opinion. (WP No. 99 of 2015 dt 11-3-2022 (AY. 2009-10)

Starent Network (India) Private Limited v. DCIT(Bom)(HC)(UR)

S. 147 : Reassessment –With in four years-Share capital-Share premium-Income from other sources-Produced evidence in support of increase of authorised share capital, share allotment and names and address of parties from whom share premium received-Change of opinion-Reassessment was quashed. [S. 56 (2)(viib), 148 Art, 226]

Allowing the petition the Court held that during assessment proceedings assessee-company in support of increase in its authorized share capital had produced evidences in form of details

of share allotment, names and addresses of parties from whom share premium was received etc. and Assessing Officer after considering same had finalized assessment and passed assessment order, subsequent reopening of assessment on same issue was purely on change of opinion. Reassessment notice was quashed. Referred Crompton Greaves Ltd. v. ACIT (2015) 229 Taxman 545/ 275 CTR 49 (Bom)(HC). (AY. 2013-14

Kalpataru Land Pvt. Ltd v. ACIT (2022) 136 taxmann.com 434 (Bom) (HC)
Editorial : Affirmed in ACIT. v. Kalpataru Land Pvt. Ltd. (2022)447 ITR 364 (SC)

S. 147 : Reassessment –With in four years-Reason must be based on tangible material-Change of opinion-Assessment order did not mention these issues not material-Reasons cannot be improved or supplemented or substituted by affidavit or oral submissions-Notices and order rejecting objections quashed and set aside.[142(1), 143(2), 148, Art, 226]

Held that once a query is raised during the assessment proceedings and the assessee has replied to it, it follows that the query raised was a subject of consideration by the Assessing Officer while completing the assessment. It is not necessary that the assessment order should contain a reference or discussions to disclose his satisfaction in respect of the query raised. Aroni Commercials Ltd. v. Dy.CIT (2014) 362 ITR 403 (Bom)(HC).Court also held that reasons cannot be improved or supplemented or substituted by affidavit or oral submissions. First Source Solutions Ltd. v. ACIT (2021)) 438 ITR 139 (Bom)(HC). (AY.2003-04)

Golden Tobacco Ltd. v. ACIT (2022)447 ITR 736/ 285 Taxman 688 (Bom) (HC)

S. 147 : Reassessment-Share premium-Provided working of fair value of equity shares as per rule 11UA in the original assessment proceedings-Change of opinion-Reassessment notice is not valid [S. 56(2)(viib),148,R. 11UA Art, 226]

In response to queries raised during assessment proceedings, assessee had provided working of fair value of equity shares as per rule 11UA, details of large share premium received during year, name, address and PAN of persons who had applied for shares along with copy of share application and copy of bank statement reflecting such payments, creditworthiness and identity of investors and genuineness of investment in share capital and details of expenses incurred for increase in share capital. The AO issued notice for reopening of assessment on the ground that the assessee had issued shares at excess premium which was required to be added under section 56(2)(viib)of the Act. On writ allowing the petition the Court held that the very issue of share premium was a subject matter of consideration by Assessing Officer during original assessment proceedings hence the notice for reassessment is not valid. (AY 2014-15)
Bhavani Gems (P) Ltd v. ACIT (2022) 287 Taxman 682 (Bom.)(HC)

S. 147 : Reassessment-Bogus transaction-Information from investigation wing-Limited scrutiny-Futures and options-Loss was set off against normal business-Reassessment notice valid. [S.43(5)(d), 133(6),148,151, Art, 226]

Held that the issue under consideration had not been examined by the Assessing Officer while passing the assessment order. The transactions entered into by the assessee were non-genuine and were carried out with a view to avoid paying tax. The assessee had set off the loss incurred from futures and options trading against profits booked from normal business activity. This was a text book case of tax avoidance. The notice of reassessment was valid.(AY. 2016-17)

Shrikant Phulchand Bhakkad (HUF) v.JCIT (2022)446 ITR 250 / 213 DTR 361/ 328 CTR 64 / 287 Taxman 440 (Bom) (HC)

S. 147 : Reassessment-Capital gains-Profit on sale of property used for residence-Investment in six residential flats-Change of opinion-Reassessment is not valid [S. 45, 54, 148, Art, 226]

Assessee claimed exemption under section 54 which was allowed. Thereafter, a notice under section 148 was issued to assessee on ground that documents relating to acquisition of new property showed that it related to six residential flats and since under section 54, exemption is not allowed if assessee purchases more than one residential house from capital gain accrued from sale, assessee was not eligible for section 54 exemption. On writ allowing the petition the Court held that the assessee had provided all evidences to justify that when he purchased flat, it was one residential unit and that issue of deduction under section 54 was a subject matter of consideration by Assessing Officer during assessment proceedings. Accordingly the reopening of assessment was quashed on the ground of change of opinion. (AY. 2016-17)

Gagan Omprakash Navani. v. ITO (2022) 286 Taxman 668 (Bom)(HC)

S. 147 : Reassessment –With in four years-Interest free loans to sister concern-Charge of interest-Change of opinion-Reassessment notice was quashed [S. 36(1)(iii), 148, Art, 226]

Held that issue of loan being given to group companies either at low interest rate or no interest rate was a subject matter of consideration by Assessing Officer during original assessment proceedings and assessee had provided party wise details along with address of parties to whom loans/advances were given and interest received on such loans and nature of loans/advances had been considered in assessment order, reopening of assessment by Assessing Officer on ground that interest should be charged at 12 per cent per annum on loan given to sister concern and therefore this interest income had escaped assessment, being a mere change of opinion on very same material, was not justified. Reassessment notice was quashed.(AY. 2017-18)

Parinee Realty (P.) Ltd. v. ACIT (2022] 286 Taxman 337 / 214 DTR 279 (Bom)(HC)

S. 147 : Reassessment –With in four years-Depreciation-Information from Directorate of Income Tax, Intelligence & Criminal Investigation-Goodwill, trademarks and patents and Brands-Reopening of assessment on basis of very same material to take a different view was not justified-Reassessment notice was quashed [S. 32, 148, Art, 226]

Assessment was sought to be reopened in case of assessee on ground that revenue received certain information from Directorate of Income Tax, Intelligence & Criminal Investigation,

Chennai, from where it was found that acquisition of Brands and Goodwill as claimed by assessee was incorrect and said transfer had not been established and thus, assessee had claimed incorrect depreciation. On writ allowing the petition the Court held that facts pertaining to acquisition of Goodwill, trademarks and Patents and Brands were not only available before Assessing Officer at time of original assessment, but were also analysed by him during course of assessment proceedings. Assessing Officer after considering all points passed assessment order, accepting fact that transfer had been established and there was proper acquisition of Brands and Goodwill, as claimed by assessee. Hence where on consideration of material on record, one view was conclusively taken by Assessing Officer, it would not be open to reopen assessment based on very same material with a view to take another view. Notice for reassessment was quashed. (AY. 2012-13)

Preethi Kitchen Appliances (P.) Ltd. v. ACIT (2022) 446 ITR 411 / 286 Taxman 483 (Bom)(HC)

S. 147 : Reassessment –With in four years-Speculative transactions-loss of cancellation of forward contract-Change of opinion-Reassessment notice was quashed [S. 43(5), 148, Art, 226]

The Assessing Officer sought to reopen assessment in case of assessee as on verification of records, he observed that Schedule 31 in profit and loss account showed that assessee company had debited a sum of Rs. 1070.42 lakhs towards 'net loss of cancellation of forward contract'. According to Assessing Officer, this amount of Rs. 1070.42 lakhs was speculation loss and should not have been allowed against regular business income. On writ the Court held that all these details were available before Assessing Officer who passed assessment order and between date of order of assessment sought to be reopened and date of formation of opinion by Assessing Officer, nothing new had happened. It was merely a fresh application of mind by a different Assessing Officer to same set of fact. Accordingly the notice for reopening assessment and order passed disposing of objections was quashed and set aside. (AY. 2012-13)

Parle Products (P.) Ltd. v. ACIT (2022] 286 Taxman 235 /(2023) 453 ITR 765(Bom)(HC)

S. 147 : Reassessment –With in four years-Sale of shares-Business income –Capital gains-Change of opinion-Reassessment notice was quashed [S. 28(i), 148, 154 Art, 226]

Assessing Officer passed assessment order under section 143(3) dated 31-12-2007. Rectification order under section 154 dated 6-5-2009 was also passed. Subsequently assessment was reopened and order under section 143(3) read with section 147 dated 18-12-2009 was passed. Thereafter assessee received a notice dated 31-3-2010 under section 148 from Assessing Officer alleging that he had reason to believe that assessee's income chargeable to tax for assessment year 2005-06 had escaped assessment within meaning of section 147 of the Act. Assessing Officer also rejected assessee's objections to reopening On writ allowing the petition the Court held that the entire basis of forming an opinion that there had been an escapement of assessment was that profit arising out of sale of shares by assessee was nothing but business income and, therefore, profit arising out of sale of shares held by assessee in group companies would be treated as assessee's income from business and not profit arising out of sale of investment-It was also noted that in assessment order dated 31-12-2007 passed under section 143(3) same point raised in reasons for reopening had been discussed and considered. Reassessment notice on basis of change of opinion which could not be a ground for reopening. Reassessment notice was quashed. (AY. 2005-06)

Tata Sons Ltd. v. CIT (2022) 286 Taxman 587 (Bom)(HC)

S. 147 : Reassessment-Bad debt-Rural branch-Withdrawal of claim in subsequent year-Reassessment is not valid [S. 36(1)(viia), 148, Art, 226]

During assessment, Assessing Officer sought clarification on allowability of claim u/s 36(1(viia) of the Act. The claim was allowed. The Assessing Officer proposed to reopen assessment on ground that during assessment proceedings for assessment year 2010-11 when assessee was called upon to submit details of rural branches and advances, assessee had withdrawn claim for deduction under section 36(1)(viia) of the Act hence the assessee was likely to have claimed incorrect deduction as many branches initially projected as rural branches were not rural branches as prescribed in Explanation (ia) to clause (viia)of the Act. On writ the Court held that since specific queries were raised related to allowability of deduction under section 36(1)(viia) and upon consideration of same claim was allowed for relevant assessment year, reassessment on premise that it was likely that assessee claimed incorrect deduction in past assessment year without any tangible material would be in nature of guess. Accordingly the notice for reassessment was to be quashed. (AY. 2006-07)

HDFC Bank Ltd. v. ACIT *(*2022) 445 ITR 196 / 286 Taxman 365 (Bom)(HC)

S. 147: Reassessment-Limitation-No finding or recording of reason that income has escaped assessment on account of failure of assessee to disclose truly and fully all material facts-Notice and order rejecting objections unsustainable. [S. 148, 149 150. Art, 226]

Notice was issued of under section 148 beyond the period of limitation prescribed under section 149. On a writ petition allowing the petition the Court held that there was no specific finding that income chargeable to tax had escaped assessment for the AYs 2001-02, 2002-03 and 2003-04 nor was there a direction to the Assessing Officer to initiate reassessment proceedings under section 147 by issuing notices under section 148. On the contrary, the Tribunal had recorded specific findings that following the project completion method the assessee had offered income in respect of the project in the AY 2003-04 which had been accepted by the Department. Once income was taxed in the AY 2003-04 on the completion of the project, there could not be any question of taxing the same amount in the earlier years by applying a particular percentage on the amount of work-in-progress shown in the balance-sheet. There was nothing in the reasons recorded for reopening of the assessments to indicate that there was any escapement of income due to failure on the part of the assessee to truly and fully disclose material facts. Accordingly the notice issue was quashed. (AY. 2001-02 to 2003-04)

SEA Sagar Construction Co. v . V.A Nair ITO (2022) 444 ITR 385/ 213 DTR 393 / 288 Taxman 609/ 328 CTR 488 (Bom)(HC)

S. 147 : Reassessment-Failure to file return of income-Cash deposited in the bank account-Reassessment notice is justified [S. 68, 139, 148, Art, 226]

The assessee did not file a return of income. The reassessment notice was issued based on the information that the cash was deposited in the bankaccount of the assessee. The assessee filed the writ petition.Dismissing the petition the Court held that the objections raised by the assessee were considered by the Assessing Officer and the Principal Commissioner for determining whether any prima facie case was made out to reopen the assessment .. Relied onNew Delhi Television Ltd. v. Dy. CIT (2020) 424 ITR 607 (SC) Phool Chand Bajrang Lal v. ITO (1993) 203 ITR 456 (SC) and Central Provinces Manganese Ore Co. Ltd. v. ITO (1991) 191 ITR 662 (SC). *(*AY. 2017-18)

Farmacia Molio v. ITO (2022) 444 ITR 65 / 287 Taxman 11 / 216 DTR 219/ 327 CTR 71 (Bom) (HC)

S. 147 : Reassessment –With in four years-All relevant material in respect of employee costs reimbursed to overseas subsidiaries furnished in the course of original assessment proceedings-Change of opinion-Reassessment notice is not valid.[S. 92CA, 148, Art, 226]

Allowing the petition the Court held that all relevant material in respect of employee costs reimbursed to overseas subsidiaries furnished in the course of original assessment proceedings.Once a query is raised during the assessment proceedings and the assessee has furnished a reply thereto, it implies that the query so raised was a subject matter of consideration of the assessing authority. It is not an immutable rule that an assessment order should contain reference or discussion on such query.Reassessment notice is not valid. Relied on Aroni Commercials ltd. v. Dy. CIT (2014) 362 ITR 403 (Bom)(HC) *(*AY.2014-15)

Oracle Financial Services Software Ltd. v. Dy. CIT (2022) 286 Taxman 469/(2023)452 ITR 272 (Bom)(HC)

S. 147: Reassessment-With in four years-Change of opinion-Information from investigation wing-Reassessment was quashed [S. 143(3), 148]

Dismissing the appeal of the revenue the Court held that the reasons only referred to the need to verify the documents and there is no link between the statement with the rest of the reasons supplied. Relied on Nivi Trading Ltd v. UOI (2015) 375 ITR 308 (Bom)(HC).(AY. 2006-07)

PCIT v. Sheetal Dushyant (2022) 134 Taxman 327 (Bom)(HC)

Editorial : SLP of revenue is dismissed; PCIT v. Sheetal Dushyant (2022) 285 Taxman 85 (SC)

S. 147: Re assessment-Change of opinion-Housing project-Full details of residential unit was furnished in the course of assessment proceedings-Re assessment is held to be bad in law. [S.80IB(10), 148 Art, 226]

Allowing the petition the Court held that where assessee had disclosed truly and fully material facts pertaining to deduction claimed under section 80-IB(10) and same were carefully scrutinized by Assessing Officer and he had taken a view that assessee would be entitled to deduction under section 80-IB(10), assessment sought to be reopened on account

of change of opinion of Assessing Officer about manner of computation of deduction under section 80-IB(10) was not justified.

Gemstar Construction (P.) Ltd. v. UOI (2022) 285 Taxman 457 (Bom) (HC)

S. 147 : Reassessment –With in four years-Capital gains –Shares-Rate of tax at 10 %-Application of mind during original assessment proceedings-Notice issued u/s 148 is quashed [S. 48, 112, 143(3), 148, Art, 226]

Petitioner sold shares and earned long-term capital gain. He filed return of income and paid tax on capital gain at rate of 10 per cent as per proviso of section 112. During assessment, petitioner clarified queries raised by Assessing Officer as to why rate of tax on capital gains should be computed at rate of 10 per cent instead of 20 per cent under section 112 and of applicability of first proviso to section 48. The Assessing Officer after being satisfied with petitioner's submissions passed assessment order. The notice us. 148 was issued 13 th March 2008 on ground that rate of tax to be applied to capital gain that arose to petitioner would be 20 per cent in terms of section 112(1)(c)(ii) and not 10 per cent. On writ the Court held that since issue of applicability of first proviso to section 48 as well as that of rate of tax under section 112 were discussed during assessment proceedings under section 143(3) and there was due application of mind by Assessing Officer during original assessment, reopening assessment on same issue would be a mere change of opinion and impugned notice was to be quashed. (AY. 2004-05)

Conopco Inc v. UOI (2022) 285 Taxman 472 / 215 DTR 283/ 329 CTR 773 (Bom) (HC)

S. 147 : Reassessment –With in four years-Depreciation property-Bad debts-Change of opinion-Re assessment is not justified [S. 32, 36(1)(vii),148, Art, 226]

Reassessment was initiated in case of assessee-company and reasons for reopening of assessment were that depreciation on property was wrongly allowed; writing off an amount as bad debts in support of two companies where arbitration award had been given in favour of assessee was not justified, etc. As regards said issues, query was raised by Assessing Officer in notice under section 142(1) and explanation had been given by assessee and thus, said issues were subject matter of consideration by Assessing Officer during original assessment proceeding. On writ the Court held that reopening of assessment was on basis of change of opinion and there was no reason for Assessing Officer to have a reasonable belief that income chargeable to tax had escaped assessment. (AY. 2003-04)

Golden Tobacco Ltd. v. ACIT (2022)285 Taxman 688 (Bom) (HC)

S. 147 : Reassessment-Depreciation on goodwill-Change of opinion-Re assessment notice is not valid [S. 32, 148, Art, 226]

Reassessment was initiated in case of assessee-company to disallow assessee's claim of depreciation on goodwill. On writ the Court held that in original assessment proceedings, assessee had provided details regarding claim of depreciation with supporting evidence and Assessing Officer after considering said evidences, allowed said claim. On facts, initiation of reassessment was nothing but mere change of opinion. Re assessment notice is quashed. (AY. 2014-15))

Sterling and Wilson (P.) Ltd. v.ACIT (2022)285 Taxman 468 (Bom) (HC)

S. 147 : Reassessment –With in four years-Store launch expenses-Capital or revenue-Change of opinion-Reassessment notice is quashed [S. 37, 148, Art, 226]

During relevant year, assessee had claimed expenses incurred till opening of new stores under head store launching expenses in its books of account.Such expenditure incurred by assessee prior to launching a new retail store comprised of cost of advertisement and promotion, employee recruitment and training, travel etc.. which was allowed as revenue expenditure. Assessing Officer sought to reopen assessment to disallow store launching expenses incurred during year on ground that these were classifiable as capital expenditure and not as revenue expenditure. On writ the Court held that subsequent to assessment, no new information or fact had come to notice of Assessing Officer so as to initiate proceedings under section 148. Assessing Officer had in his possession all primary facts when original assessment order was passed and on consideration of material on record, and explanation offered, he had arrived at a final conclusion that assessee was entitled to deduction as claimed.Reopening of assessment on basis of very same material being a clear case of change of opinion is not justified. (AY. 2004-05)

Trent Ltd. v. Dy. CIT (2022)285 Taxman 460 (Bom)(HC)

S. 147 : Reassessment –With in four years-Change of opinion-Payment to related parties-Incentives to senior employees-Difference in VAT return and Turnover as per profit and loss account-Reconciliation-Questions asked in the course of original assessment proceedings-No discussion in the assessment order-Reassessment notice was quashed. [S. 40A(2)(b), 148, Art, 226]

The assessment of the petitioner was completed under section 143(3) of the Act. In the Couse of assessment proceedings the Assessing Officer has issued specific questions as regard the payments made to related parties in the form of incentives and also on the issue of difference in turnover VAT return and as per the profit and loss in the return of income. The petitioner gave the detailed reply after considering the said reply the Assessing Officer had not made any addition however there was no discussion in the assessment order. The Assessing Officer issued notice u/s 148 of the Act. In response to recorded reasons, the detailed explanation was filed by the petitioner. The Assessing Officer passed the order disposing of the objection. The petitioner filed writ before the High Court. Allowing the petition the Court held that once a query is raised during the assessment proceedings and the assessee has replied to it, it follows that the query raised was a subject of consideration of the Assessing Officer while completing the assessment. It is not necessary that an assessment order should contain reference and/or discussion to disclose its satisfaction in respect of the query raised. the re-opening of the assessment by the impugned notice is merely on the basis of change of opinion from that held earlier during the course of assessment proceedings. This change of opinion does not constitute justification and/or reasons to believe that income chargeable to tax has escaped assessment. Followed Aroni Commercials Ltd. v. Dy.CIT [2014] 44 taxmann.com 304 / 224 Taxman 13/ 362 ITR 403 (Bom) (HC) (AY. 2017-18)

Maharashtra Oil Extraction Private Limited v. Dy.CIT (2022) 287 Taxman 465 / 114 CCH 315 (Bom) (HC)

S. 147 : Reassessment –With in four years-No new tangible material-Reason recorded and reasons stated in objections disposing the objection are different-Reassessment notice was quashed.[S. 2(47), 47(iv), 47A, 143(3), 148, Art, 226]

Allowing the petition the Court held that there is no tangible material coming into existence after conclusion of regular assessment proceedings and before recording of the reasons on the issues stated in the reasons recorded for reopening the case. The reasons itself suggest that there is no new tangible material post the assessment proceedings and reassessment is stated to be made on the material already on record and considered at the time of passing the original assessment order under s. 143(3). In fact, by its letter dt. 7th Aug., 2017, assessee had placed on record during the regular assessment proceedings a statement giving details of the long-term capital loss incurred on the redemption of preference shares of GI Ltd. during the year ended 31st March, 2015 and the factum of GI Ltd. being a wholly owned subsidiary. The fact that GI Ltd. was wholly own subsidiary was expressly stated in the balance sheet filed by assessee and also in the letter dt. 19th Sept., 2017 addressed by the AO. Therefore, it cannot be stated that any new fact or material has come to light to alter this position
Court also observed in this case, one set of reasons was provided to assessee and when objected to by assessee, respondents justify the reopening by producing an undated and unsigned reasons which was never furnished to the assessee at any point of time prior thereto. Reassessment notice was quashed. Followed Aroni Commercials Ltd v. Dy.CIT (2014) 362 ITR 403/ 224 Taxman 13/ 44 taxmann.com 304 (Bom)(HC) (AY. 2015-16)

Great Eastern Shipping Co. Ltd. v. NFAC (2022) 211 DTR 442/ 327 CTR 482 (Bom) (HC)

S.147: Reassessment-With in four years-Change of opinion-Foreign remittance-Failure to deduct tax at source-No failure to disclose material facts-Issue was considered in the original assessment proceedings-Not specifically dealt in the assessment order-Reassessment notice was quashed [S. 14, 40(a)(i) 90, 91 92CA(3), 143(3),148, 195, Art, 226]

The reassessment notice was issued for failure to deduct tax at source on foreign remittances. Allowing the petition the Court held that there was no failure to disclose material facts. Issue was considered in the original assessment proceedings though not specifically dealt in the assessment order. Reassessment notice was quashed. Followed Calcutta Discount Co Ltd v. ITO (1961) 41 ITR 191 (SC), CIT v. Kelvinator India Ltd (2010) 320 ITR 561 (SC) (AY. 2014-15)

Oracle Financial Services Software Ltd v. Dy.CIT (2022) 210 DTR 33/ 325 CTR 95 (Bom)(HC)

S. 147 : Reassessment –With in four years-HUF-Partner-Interest paid to partner-Materials were on face of a document available before Assessing Officer-Reassessment notice was quashed [S. 148,184 Art, 226]

Assessment was sought to be reopened on the ground that according to Assessing Officer, an HUF could not become a partner of a firm or enter into a contract with other person and hence assessee had not complied with provisions of section 184 and interest paid to partners could not be considered for deduction. On writ allowing the petition the Court held that it was found that assessee had filed Form No. 3CD in which HUF was shown as a partner with 10 per cent profit sharing ratio. Form No. 3CD also indicated that a certain sum had been paid as interest to said HUF.Court held that view of the Assessing Officer being change of opinion, reopening of assessment was not justified. (AY. 2014-15)

S. A. Developers v. ACIT (2022) 285 Taxman 238 (Bom) (HC)

S. 147 : Reassessment-Block assessment-Deduction disallowed in the block assessment order-Reassessment notice is bad in law [S.80HHA, 80I, 80IA, 132, 143(3), 148, 158BA, 158BC, Art, 226]

Assessment was completed under section 143(3), read with section 147 allowing partial deduction under section 80IA of the Act. On appeal CIT (A) allowed the claim of the assesses. There was search on the assessee and block assessment order was passed u/s 158BC of the Act and disallowed the claim u/s 80IA of the Act Thereafter, on 30-3-2004 the, Assessing Officer issued notice under section 148 alleging that assessee's income chargeable to tax for assessment year 1997-98 had escaped assessment and calling upon assessee to file a return of its income within 30 days. On writ, allowing the petition the Court held that on date on which impugned notice dated 30-3-2004 was issued, Assessing Officer could not have any reason to believe that income chargeable to tax had escaped assessment under section 148 because in block assessment order dated 30-1-2004, deduction claimed by assessee had been disallowed and therefore reopening of assessment on ground that deduction claimed by assessee under sections 80-I, 80-HHA and 80-IA had not been examined properly in regular assessment could not have been allowed. Reassessment notice was quashed. Followed CIT v. H.N. Shindore (1978.) 113 ITR 679 (Bom))(HC) (AY. 1997-98)

Sanghvi Woods Ltd. v. ACIT (2022) 285 Taxman 252 / 209 DTR 323/ 324 CTR 332 (Bom) (HC)

S. 147 : Reassessment-Bad debts-Audit objection-Provision for standard asset / advances under general loan loss provision excluding provision for NPA and claiming deduction-Order of Tribunal quashing the reassessment was affirmed. [S. 35D, 36(1)viia), 148, 260A]

Dismissing the appeal of the revenue the Court held that opinion of internal audit party of income tax department cannot be recorded as information within the meaning of section 147(b) for reopening of assessment. Court held that true evaluation of the law in its bearing on the assessment must be made directly and solely by the Income-tax officer. Order of

Tribunal is affirmed. Followed Indian & Eastern News Paper Society (1979) 2 taxman 197 (SC), Jainam Investments v. ACIT (2021) 439 ITR 154 (Bom)(HC)

PCIT v. Yes Bank Ltd (2022) 285 Taxman 434 (Bom)(HC)

S. 147: Reassessment-Capital gains-Penny stock alternative remedy-Reassessment notice was held to be valid [S. 45,142(1), 148, Art, 226]

Reassessment notice was issued for verifying the exemption claimed in respect of penny stock on the basis of information received. The objection of the assessee was rejected by the Assessing Officer. On writ dismissing the petition the Court held that the assessee has not offered the short term capital gains hence the reassessment notice was held to be valid. (AY. 2012-13) (W.P. No. 2817 of 2019 dt. 3-1-2022)

Yogini Bipin Soneta v. ITO (Bom) (HC). www.itatonline.org

S. 147 : Reassessment-Duty of Assessing Officer-Rejection Of Objections must be by speaking order recording reasons for rejection of each objection-Matter remanded [S. 148, 153C, Art, 226]

The Income-tax Officer rejected the objections filed by the assessee. On a writ the Court held that the order rejecting the objections raised by the assessee against reopening of the assessment under section 147 was in violation of the principles laid down by the court in the case of Tata Capital Financial Services Ltd. v. ACIT (2022)443 ITR 127 (Bom) (HC). The Assessing Officer has to consider each and every objection raised by the assessee against reopening of the assessment under section 147 of the Income-tax Act, 1961 and record reasons for his conclusion. The various objections raised by the assessee are required to be answered by sufficient and cogent reasons.(AY. 2016-17)

Nitinkumar v. JCIT. (2022)443 ITR 411/ 139 taxmann.com 402 (Bom) (HC)

S. 147 : Reassessment-Borrowed cash loan-Violation of section 269SS-Reason did not mention that income that escaped assessment-Mechanical approval-Reassessment notice is invalid and quashed [S. 148, 151, 269SS, 269T, Art, 226]

In the recorded reasons the AO has mentioned that the assessee had borrowed cash loan and violated the provisions of section 269SS of the Act. On writ the Court held that the reasons recorded did not mention that income has escaped assessment, hence the notice issued was quashed. (WP No. 3620 of 2019 dt.15-1-222)(AY. 2012-13)

Sanjeev Amritlal Chheda v. ITO (2022) The Chamber's Journal-February-P. 176 (Bom)(HC)

S. 147 : Reassessment-Change of opinion –Depreciation on intangible-Acquisition of Brands-Information from Investigation Wing-All materials were before the Assessing Officer during original assessment proceedings-Once the query raised was subject to the consideration of the AO, while completing the assessment, it is not necessary that the assessment order should contain reference and / or discussion to disclose his satisfaction in respect of each of query raised-Reassessment based on same records quashed on the ground of change of opinion [S. 32, 92CA(4), 148, Art, 226]

In the reasons for the proposed re-opening of assessment it was recorded that after the assessment order was passed the department received certain information from the Directorate of Income Tax, Intelligence & Criminal Investigation Chennai from where it was fund that the acquisition of brands and the assessee has claimed incorrect depreciation. On writ the Court held that on consideration of facts the AO has conclusively taken one view and based on same material, it will not be open to reopen the assessment to take another view. The fact pertaining to the acquisition of Good will, Trade Mark, Patents and Brands were not only available before the Original assessment by the AO but were also analysed by the AO during the original assessment proceedings. The Court observed that it was true that there was no detailed reference to the query raised by the AO during the assessment proceedings and reply provided by the assessee along with documentary evidence. But, once the query raised was subject to the consideration of the AO, while completing the assessment, it is not necessary that the assessment order should contain reference and / or discussion to disclose his satisfaction in respect of each of query raised. If the AO has to record the consideration bestowed by him on all issues raised during the assessment proceedings even where he is satisfied, then it would be impossible for the AO to complete all the assessments which are required to be scrutinized by him under section 143(3) of the Act. Notice issued for reopening of assessment was quashed. (WP No. 3546 of 2019 dt. 4-1-2022)(AY. 2012-13)

Prethi Kitchen Appliances Pvt Ltd v.ACIT (2022)) The Chamber's Journal-February-P. 180 (Bom)(HC)

S. 147 : Reassessment –With in four years-Unsold flats-Income from house property-Issues were a subject matter of consideration by AO while completing assessment-Change of opinion-Reassessment notice is not valid [S. 22, 43CA, 148, Art, 226]

Assessment was sought to be reopened on ground that assessee had not offered to tax value of unsold flats under head income from house property and out of 12 flats sold by assessee, market value for 9 flats was more than agreement value and therefore, provisions of section

43CA(1) were applicable. On writ the Court held that same issues were raised during assessment proceedings and assessee had also replied to them and thus, same were a subject matter of consideration of Assessing Officer while completing assessment. Therefore, reopening of assessment being merely on basis of change of opinion hence bad in law. (AY 2017-18)

Lokhandwala Construction Industries (P) Ltd v. Dy. CIT (2022) 287 Taxman 330 /113 CCH 189 (Bom.)(HC)

S. 147 : Reassessment-Complaint with Maharashtra RERA-Complaint was amended-Reassessment notice without verifying the amended RERA complaint is held to be not valid [S.68, 148, Art, 226]

Assessee filed objections stating that complaint with Maharashtra RERA was subsequently amended and provided amended copy of RERA complaint. Assessing Officer vide order dated 12-11-2019 rejected objections stating that authenticity of amended copy of RERA complaint was not ascertainable. On writ the Court held that objections were filed on 4-7-2019 and order on objection was passed on 12-11-2019 (five months and one week later) and Assessing Officer had enough time to find veracity or authenticity of amended RERA complaint if he had any doubt and he could not have dismissed objections by just a wave of his hand. Notice was set aside. (AY. 2012-13)

Anil Gulabdas Shah v. ACIT (2022) 287 Taxman 402 (Bom.)(HC)

S. 147 : Reassessment-Charitable trust-Accumulation of income-Deemed accumulation of income-Change of opinion-Reassessment is not justified [S. 11(2), 148, Art, 226]

Assessee, a registered charitable Trust, filed its return of income and claimed an accumulation of Rs. 70 lakhs for being used for charitable and religious purposes in India over a period of five years under section 11(2) of the Act. In audit report and in return of income, inadvertently it was mentioned that such accumulation was against section 11(1) which was explained during course of assessment proceedings which was accepted. The AO issued notice for reassessment. On writ the Court held that reassessment notice due to change of opinion hence the notice was quashed. (AY.2016-17)

Chandrakant Narayan Patkar Charitable Trust v. ITO (E) (2022) 287 Taxman 685 (Bom)(HC)

S. 147 : Reassessment-Non disclosure of primary facts-Single ground of reopening of reassessment is valid [S.143(1), 148, Art, 226]

Dismissing the petition the Court held that the Assessing Officer had mentioned details of information received by him; he had given analysis of such information and findings as to why he had formed a reason to believe that income had escaped assessment-According to High Court, such reasons could not even remotely be termed as illusory or hypothetical or conjectures and, thus, reopening of assessment was justified. (AY. 2012-13)

Rajendra Singh Karnawat v. ACIT (2022) 138 taxmann.com 208 (Bom)(HC)

Editorial: SLP dismissed as withdrawn as final reassessment order had already passed which was appealable before CIT(A),Rajendra Singh Karnawat v. ACIT (2022) 287 Taxman 227 /113 CCH 159 (SC)

S. 147 : Reassessment-Carry forward and set off of brought forward losses-Business expenditure-Tax Audit Report-Provided all details in repose to notice-Provided break-up of head-wise expenses and these figures were also mentioned in statement of profit

and loss filed by assessee, reopening of assessment being mere change of opinion was not justified. [S. 37(1), 72, 148, Art, 226]

Held that the assessee had received notice calling upon it to furnish details of brought forward losses and assessed losses, if any, along with proof and, assessee had provided all details as sought for. Therefore, reopening of assessment being merely by way of change of opinion relying on same set of primary facts which had been submitted by assessee during original assessment proceedings was to be quashed and set aside. As regards the expenditure the Assessee had replied to this notice by a communication addressed through assessee's Chartered Accountants and in said document assessee had provided all details as sought for. In fact these figures were also mentioned in statement of profit and loss filed by assessee.Therefore, reopening of assessment being merely by way of change of opinion relying on same set of primary facts which had been submitted by assessee during original assessment proceedings was to be quashed and set aside.. (AY.2013-14)

Tech Engg Project Services and Equipments (I) (P) Ltd. v. UOI (2022) 287 Taxman 24/ / 220 CTR 209/ 329 CTR 665 113 CCH 282 (Bom.)(HC)

S. 147 : Reassessment-Cash credits-Source of loan explained-Change of opinion-Reassessment notice is not sustainable [S. 68, 133(6), 148, Art, 226]

Assessing Officer issued notices to loan providers under section 133(6) for verification and confirmation of loan transactions and said parties responded and disclosed their identity, explained creditworthiness, genuineness of transactions, source of funds, etc. Assessing Officer after considering responses of loan providers and all documents and explanations submitted by assessee passed assessment order under section 143(3). Thereafter Assessing Officer reopened above assessment for reasons that as assessee offered no explanation about nature and source of loan and creditworthiness of creditors and genuineness of transactions had not been explained, source of loan remained unexplained and needs to be added to total income of assessee. On writ the Court held that since entire issue which was subject matter of reasons recorded had been raised during assessment proceedings, response obtained from assessee and assessee's explanation had been accepted by Assessing Officer reopening was purely based on change of opinion and, thus, not sustainable. (AY. 2014-15)

Vapi Infrastructure and Industrial Township LLP v. ITO (2022) 287 Taxman 468/ 114 CCH 97 (Bom.)(HC)

S. 147 : Reassessment-With in four years-Wrong facts-Re-opening based on wrong facts is impermissible-Typographical error/ oversight in the reasons recorded for re-opening is not sustainable to uphold the re-assessment proceedings. [S. 148, 151, Art, 226]

The AO initiated re-assessment proceedings on the ground that the assessee has purchased immovable property. However, in fact the assessee alongwith his co-owners had sold their ancestral land. On a writ petition filed with the High Court, it was held that:

The Department has proceeded to initiate re-opening proceedings on wrong assumption of facts. In fact the Revenue has admitted in the Affidavit filed by it that due to typographical error/ oversight the sale of land has been typed as purchase of land. It was held that this is not permissible in law and the reasons for re-opening as to be read as they were recorded by the AO and no substitution or deletion is permissible. The reasons recorded for re-opening should be clear and unambiguous and cannot be supplemented by filing an affidavit or oral submissions. Thus, the notice and the order passed thereof was quashed and set-aside with a liberty to the Revenue to initiate fresh proceedings in accordance with law. (AY. 2017-18)

Naveen Kumar Jaiswal v. ITO (2022) 215 DTR 277/ 327 CTR 226 (Jharkhand HC)

S. 147: Reassessment-Capital gains-Excess cost of acquisition of property-Alternative remedy-Writ petition was dismissed [S. 45,143(3), 148, 220(6), Art, 226]

Where reassessment was initiated in the case of assessee on the ground that assessee claimed excess cost of acquisition of property while computing capital gain/loss on sale of property and, thus, income had escaped assessment and thereafter reassessment order was passed, since the subject matter in issue involved factual matrix which could not be decided by writ court, assessee was to be directed to file a statutory appeal before an appellate authority (AY. 2014-15)

East Cost Consultants (India) Ltd. v. Dy. CIT (2022) 217 DTR 22 / 328 CTR 243 (Mad) (HC)

S. 147 : Reassessment-Change of opinion-Initiation of reassessment proceedings merely on the basis of change of opinion is invalid [S. 10(23G), 40(a),148, 260A]

Assessee had created certain provisions in respect of technical fees payable in some earlier years. As tax was not deducted during those earlier years, the provisions were not allowed as deduction in those years. During the year under consideration, the assessee reversed the provisions. The Assessing Officer, in the course of original assessment proceedings, accepted the assessee's submission that as the original provision was not allowed as a deduction, reversal of the same could not be taxed again in the year under consideration. Assessing Officer thereafter issued a notice under section 148 and in the reassessment order assessed to tax the amounts of provisions which were reversed during the year. High Court held that the reassessment was initiated on 'change of opinion' as the Assessing Officer had stated that the issue was 'inadvertently' allowed in the original assessment proceedings without verifying the reversal of provisions. High Court held that the reassessment proceedings were invalid as the same was contrary to the law laid down by the Supreme Court in CIT v. Kelvinator of India Ltd. (2010)320 ITR 561(SC). (AY. 2008-09)

ABB India Ltd. v. JCIT (2022) 219 DTR 170 / 115 CCH 235 (2023)451 ITR 489 (Karn) (HC)

S. 147: Reassessment-Principle of natural justice-Reassessment completed without providing an opportunity of being heard-Contention of alternative remedy was rejected-Order and notice was quashed and set aside [S. 148, Art, 226]

Reassessment proceedings were initiated by way of the issue of notice under section 148 of the Act. In one of the cases, the assessee was not provided with an opportunity of being heard through video conferencing in spite of requesting the same. In another case, the "Dashboard for income tax portal" was found to be closed well before the time limit specified in the show cause notice. Hence the Assessee was unable to file a reply and seek a personal hearing. The AO then passed the reassessment order without providing such an opportunity for a hearing. On writ, the Court held that the reassessment proceedings suffered from a gross violation of principles of natural justice and hence the impugned orders were quashed and set aside. The

contention of the department regarding the availability of an alternate remedy by way of appeal against such orders was also rejected. (AY. 2013-14, 2016-17)
Ramesh Chandra v. NFAC (2022) 327 CTR 744/ 216 DTR 293 (Raj)(HC)

S. 147 : Reassessment-Deduction of tax at source-Payment to non-resident-Multimedia charges-Alternative remedy-Order of single Judge of High Court directing the assessee to participate in reassessment proceedings was affirmed [S.148, 195, Art, 226]

Assessing Officer reopened assessment of assessee for reasons that it had not deducted tax at source under section 195 on amount paid to foreign companies towards multimedia charges which warranted reopening of assessment. He also rejected objections raised by assessee holding that there was tangible material evidence made available to resort to reassessment proceedings. Single Judge of High Court directed assessee to participate in reassessment proceedings and to place all materials and legal issues before Assessing Officer for consideration On appeal division bench held that since a final order in reassessment proceedings was yet to be passed, direction issued by Single Judge was proper and did not call for any interference. Assessing Officer was directed to afford an opportunity of hearing to assessee and after considering all objections raised pass appropriate order on merits. (AY. 2004-05)

Pentamedia Graphics Ltd v. ACIT (2022) 212 DTR 65 / 326 CTR 86 / 140 taxmann.com 10 (Mad)(HC)
Editorial : Order of single Judge, Pentamedia Graphics Ltd v. ACIT (2022) 212 DTR 671/ 326 CTR 93/ 138 taxmann.com 48 (Mad)(HC)

S. 147: Reassessment-Interest-Co-operative Banks and Nationalized Bank other than Co-operative Societies-Not explained properly –Income from other sources-Reassessment notice is held to be valid. [S.80P(2)(i), 148, Art, 226]

Assessee filed its return of income for relevant year declaring nil income after claiming deduction under section 80P. Assessment was sought to be reopened by Assessing Officer by issue of notice under section 148 on ground that assessee claimed deduction on interest received on FDR's from co-operative banks and nationalized banks, which was inadmissible under section 80P of the Act. On writ the Court held that the Assessing Officer had rightly formed opinion that interest derived from surplus funds invested by assessee in nature of FDRs in Co-operative Banks and Nationalized Bank, other than Co-operative Societies will certainly not fall in category to be entitled to claim deductions under section 80P(2)(i) and section 80P(2)(d) and thus have escaped assessment and reasons recorded by Assessing Officer being self explanatory, clear and unambiguous, prima facie Assessing Officer had been able to establish a vital link to belief that there was escapement of income chargeable to tax. Therefore, reopening of assessment was justified.(AY. 2015-16)

Katlary Kariyana Merchant Sahkari Sarafi Mandali Ltd. v. ACIT (2022) 215 DTR 125/ 327 CTR 138 / 140 taxmann.com 602 (Guj)(HC)

S. 147 : Reassessment –With in four years-Share application-Share premium-Information from investigation-Material giving rise to prima facie belief that income had escaped assessment, sufficient-Reassessment notice is valid [S. 143(1), 148, Art, 226]
Dismissing the petition the Court held that the reasons for reassessment in both the cases revealed clearly the specific details of the allegedly offending transactions. The reasons disclosed the receipt of information that was hitherto unavailable with the assessing authority. Though it was the specific case of the assessee that the materials relied upon were available on record even at the first instance, there was nothing on record either by way of correspondences or any other material from the assessee to indicate this. The materials referred to in the reasons constituted new and tangible material, unavailable at the first instance to the officer. It was such information, as supplied by the Director-General, Investigation, that the officer had considered to arrive at his prima facie belief that income may have escaped assessment to tax. The assessing authority referred to material received from the Director-General, Investigation bringing to his notice information relating to the allegedly offending share allocation and pricing. This constituted tangible material on the basis of which jurisdiction had been assumed. The notices of reassessment were valid.(AY-2008-09, 2009-10)(SJ)

Kalanithi Maran v. JCIT (2022) 219 DTR 33/ 329 CTR 474 / (2023) 450 ITR 13 (Mad)(HC)

Kavery Kalanithi v. JCIT (2022) 219 DTR 33/ 329 CTR 474 (2023) 450 ITR 13 (Mad)(HC)

S. 147 : Reassessment-Mark-to-Market loss-No new material-Notice for reassessment and order disposing the objection. was quashed [S. 14A, 37(1), 72, 148, Art, 226]

The assessment was completed u/s 143(3) of the Act. Reassessment notice was issued on the ground that firstly, mark-to-market loss on restatement of outstanding forward contracts was a notional loss and not allowable as a deductible expenditure; secondly, assessee was not allowed to carry forward and set off losses of SEZ units against other taxable income; thirdly, cost of software licenses debited to profit and loss account as 'other expenses' ought to be treated as intangible assets eligible for depreciation at rate of 25 per cent and excess expenditure ought to be disallowed; fourthly, disallowance effected in terms of section 14A ought to be enhanced as average value of investment had been taken at a lower sum and; lastly, provision for customer rebate and billed receivables was to be added back to computation of income. On writ the Court held that all issues which were sought to be dealt within impugned reopening proceedings, were noted at time of assessment and officer had also pointed queries to assessee and sought details that were furnished and it was only

thereafter that an order of scrutiny was passed. Though there might be no specific mention of all issues in question in order of assessment, however, very fact that issues were raised at time of assessment and responses solicited that assessee had duly furnished, would make it clear that these issue had not escaped attention of Assessing Authority. The assessee had made a full and true disclosure originally and there was also no material found by officer post original assessment. Since reasons proceed wholly on basis of materials furnished by assessee originally reopening was unjustified. (AY. 2012-13) (SJ)

Cognizant Technology Solutions India (P.) Ltd v. ACIT (2022) 289 Taxman 660 (Mad)(HC)

S. 147 : Reassessment-Transfer pricing-Reference to TPO-Section 144C(4) only states that AO has to pass an assessment order in accordance with provisions of Act and it nowhere states that reopening notice can be issued only after passing an assessment order-Reassessment notice is held to be valid [S.92CA, 144C (4), 148, Art, 226]

During scrutiny, Assessing Officer referred matter to TPO with respect to international transactions under section 92CA(1) and report was submitted determining ALP of these transactions. On receipt of said report Assessing Officer issued a draft assessment order under section 144C. However, Assessing Officer instead of passing final assessment order, issued a notice for reopening assessment under section 148. The assessee challenged the said notice by filing writ petition. Dismissing the petition the Court held that there is no embargo under section 147, to issue notice under section 148, where assessment order has not been passed after starting scrutiny proceedings; and section 144C(4) only states that Assessing Officer has to pass an assessment order in accordance with provisions of Act and it nowhere states that reopening notice can be issued only after passing an assessment order-Held, yes-Whether thus, Assessing Officer is empowered to invoke section 147, if he has reason to believe that income chargeable to tax escaped assessment, even when no assessment orders are passed under sub-section (4) to section 144C. Accordingly the reassessment proceeding initiated by Assessing Officer was held to be valid. (AY. 2013-14)

Kone Elevator India (P.) Ltd. v. ACIT (2022) 289 Taxman 411 /(2023) 450 ITR 338 (Mad)(HC)

S. 147 : Reassessment-SEB price used as indicator of realizable value of power for claim-Assessing Officer had elaborately questioned assessee on very same issue during scrutiny assessment and assessee had submitted relevant details and documents-No fresh material-Reassessment for review of orginal assessment is not valid [S.80IA, 148]

Assessee filed its return of income which was accepted and an assessment order was passed. Reopening notice was issued on ground that SEB price used as indicator of realizable value of power for claim of deduction under section 80-IA included an element of tax duty which was really not had been paid. On appeal the Tribbunal held that the Assessing Officer had already elaborately questioned assessee on very same issue during scrutiny assessment and assessee had replied and submitted relevant details and documents hence a fresh decision could not be taken on self-same material as it would tantamount to review of original assessment. On appeal by Revenue High Court affirmed the order of Tribunal. (AY. 2000-01)

PCIT v. Graphite India Ltd. (2022) 289 Taxman 118 (Cal)(HC)

S. 147 : Reassessment-Cash deposit in bank-Demonetisation-Pendency of appeal-limited scrutiny-. No question was asked in the original assessment proceedings-Reassessment notice is held to be valid.[S.69A, 148, Art, 226]

Assessee was selected for limited scrutiny raising queries regarding cash deposit of Rs. 28.75 lakhs made by assessee during demonetisation period in Bank Assessment order was passed making an addition of Rs. 28.75 lakhs to returned income of assessee.Assessee preferred an appeal. During pendency of appeal, revenue issued a reassessment notice on ground that assessee had failed to satisfactorily explain source of fund for cash deposit of Rs. 12.50 lakhs made by assessee in Punjab National Bank and Bank of India and cash deposit of Rs. 12.50 lakhs was not adjudicated upon during original scrutiny proceedings,in income-tax return, assessee had only mentioned detail of cash deposited in Corrporation bank account and had not mentioned cash deposits in any other bank accounts. The assesseee challenged the reassessment notice and order disposing the objection. Dismsissing the petition the Court held that reopening notice issued against assessee was justified. (AY. 2017-18)

Sunil Jain. v. ITD (2022) 289 Taxman 688 (Delhi)(HC)

S. 147 : Reassessment-Business expenditure-Increase in freight charges vis-a-vis purchases-Change of opinion-No new material-Reassessment is bad in law [S.37(1), 148]

Dismissing the appeal of the Revenue the Court held that the Assessing Officer did not refer to any new material that came into his possession based on which it could be opined that income chargeable to tax had escaped assessment, reassessment proceeding was merely based on change of opinion and, thus, reassessment was unjustified.(AY. 2005-06)

PCIT v. West Bengal Essential Commodities Supply Corporation Ltd. (2022) 289 Taxman 113 (Cal)(HC)

S. 147:Reassessment-Assessment order-Stay of demand-Assessing Officer was directed to dispose of stay application in accordance with law.[S. 144, 148, 156, 226, Art, 226]

Writ petition was filed against the non disposal of stay application and assessment order.High court directed the Assessing Officer to decide the assessee's stay application, if already filed, by way of a reasoned order in accordance with law. The rights and contentions of all the parties were left open. In the event of being aggrieved by the disposal of the stay application the assessee was given liberty to file an appeal in accordance with law.(AY.2014-15)

Ira Wasson (Smt.) v. Dy. CIT (2022)449 ITR 320 (Delhi)(HC)

S. 147: Reassessment-Order disposing of objections-Must be speaking order-Order set aside-Matter remanded to the Assessing Officer to consider afresh. [S. 148, Art,226]

Against the order rejecting the disposing of objections the assessee filed writ petition. Allowing the petition the Court held that the preliminary objections raised by the assessee having not been properly dealt with by the Assessing Officer the lapses on his part were in

violation of the law laid down by the Supreme Court. The Assessing Officer had passed the order disposing of the objections mechanically and without application of mind and not in a meaningful manner. The orders disposing of the objections were set aside and matters were remitted to the Assessing Officer who should take into consideration the objections raised by the assessee and pass fresh speaking orders in accordance with the law. (AY.2013-14, 2015-16)

Roqutte Riddhi Siddhi Pvt. Ltd. v Dy. CIT (2022)449 ITR 618 (Guj)(HC)

S. 147: Reassessment-Alternative remedy-Educational institution-Obligation to file return-Participated in the proceedings-Writ petition was dismissed [10(23C), 139(4A), 139(4C), 148, Art, 226]

The assessee filed writ petition against the order passed under section 148A(d) of the Act.Dismissing the petition the Court held that the Assessing Officer had obtained prior approval of the Principal Chief Commissioner, issued notice dated March 31, 2022 and the assessee furnished return in terms of such notice. The assesse has an alternative remedy. The reassessment notice was not quashed. (AY.2015-16)

Stewart Science College. v. ITO (2022)449 ITR 257 /218 DTR 442 / 329 CTR 49 143 taxmann.com 80 / (2023) 290 Taxman 405 (Orissa)(HC)

S. 147 : Reassessment –With in four years-Income as per annual information statement in Form No. 26AS was higher than shown by assessee in P/L account-Non disclosure of primary facts –Notice issued after investigation-Reassessment notice is valid [S. 148, 194A 194C 194J, Form No 26AS, Art, 226]

Assessing Officer issued on assessee a notice under section 148 seeking to reopen assessment for reasons that as per Form No. 26AS assessee's total receipt under sections 194A, 194C and 194J was of Rs. 5.23 crores; whereas in profit and loss account it had shown total receipts at Rs. 2.61 crores which was short by 2.62 crores and this gave rise to a reason to believe that assessee did not truly and fully disclose all material facts because of which income amounting to Rs. 2.62 had escaped assessment. On writ dismissing the petition the Court held that notice under section 148 had been issued after conducting an investigation and after recording a reason to believe that assessee did not truly and fully disclose all material facts, impugned notice did not suffer from any illegality. (AY. 2013-14)

Distributors India C and F v. UOI (2022) 288 Taxman 230 (All)(HC)

S. 147 : Reassessment-Natural justice-Loan-Search-Neither furnished copy of statement nor an opportunity of cross examination was provided-Reassessment notice and order disposing the objection was quashed and set aside –Matter Remanded back to Assessing Officer to take a fresh decision after furnishing all details and documents sought for by asseseee [S. 69C, 148, Art, 226]

Appeal was filed against the order of single judge order dt. 10-5-2022 (WPO No. 2065 of 2022, dismissing the writ petition. Notice under section 148 was issued based on the search conducted upon Wadhwa group. Assessee had filed elaborate objection in reply to said notice along with a specific request seeking relevant details and documents related to escapement of income. However, Assessing Officer disposed off objections on ground that there was no legal requirement to share entire material collected during course of search in case of Wadhwa group at stage of reopening. Thereafter, assessment proceedings were concluded. On writ allowing the petition the Court held that the Assessing Officer had reopened and concluded reopening proceedings solely on basis of information obtained from Jt. Commissioner which admittedly was a third party information collected in case of Wadhwa-group. This information was not disclosed to assessee. Further, assessee was also not given opportunity of cross-examination of concerned person who was stated by Assessing Officer to have given a statement against assessee. Non-furnishing of relevant information to assessee would render reopening proceedings in violation of principles of natural justice and, thus, same was quashed and matter was remanded back to Assessing Officer to take a fresh decision after furnishing all details and documents sought for by assessee. (APOT/89/ 2022 IA No. GA/ 1/ 2022 dt.7-6-2022)

Sarwan Kumar Poddar v. UOI (2022) 288 Taxman 763 /220 DTR 120/ 329 CTR 764 (Cal)(HC)

Editorial : Order of single judge, Sarwan Kumar Poddar v. UOI (2022) 220 DTR 127/ 329 DTR 771(Cal)(HC)

S. 147 : Reassessment-Unexplained expenditure-Recorded reasons refers transaction amounting Rs 45 lakhs-Documentary evidence was filed to show that no transaction of Rs 45 lakhs was entered during the financial year-Reassessment notice and order disposing objection was quashed-Cost of Rs. 5000 was imposed on the Revenue. [S. 68, 148, Art, 226]

Assessing Officer issued reopening notice on ground that petitioner entered into a transaction amouting to Rs. 45 lakhs. Petitioner filed its objection by submitting documentary evidences which showed that no transaction amounting to Rs. 45 lakhs was entered by petitioner during year under consideration. The order was passed disposing the objection. On writ allowing the petition the Court held that Revenue submitted counter affidavit where no response was provided for query raised with respect to reason to believe for issuance of reopening notice. Furthermore, reassessment order specifically mentioned that on perusal of documentary evidence submitted by petitioner no inference could be drawn in connection with amount of Rs. 45 lakhs. Since reasons to believe recorded by Assessing Officer were totally unfounded, reopening notice was without jurisdiction and reassessment order was quashed. High Court also imposed cost of Rs.5000 on Revenue.

Uphill Farms (P) Ltd v. UOI (2022)) 288 Taxman 144/ 213 DTR 410/ 326 CTR 671 (All)(HC)

S. 147: Reassessment-Addition made on the basis of for reopening assessment was deleted by CIT(A)-Other income cannot be assessed on the basis of invalid notice [S. 148]

The Assessing Officer has to assess or reassess the income ("such income") which escaped assessment and which was the basis of the formation of belief and if he does so, he can also assess or reassess any other income which has escaped assessment and which comes to his notice during the course of the proceedings. However, if after issuing a notice under section 148, he accepts the contention of the assessee and holds that the income which he has initially formed a reason to believe had escaped assessment, has, as a matter of fact not escaped assessment, it is not open to him independently to assess some other income. If he intends to do so, a fresh notice under section 148 would be necessary, the legality of which would be tested in the event of a challenge by the assessee.An Explanation to a statutory provision is intended to explain its contents and cannot be construed to override it or render the substance and core nugatory. Dismissing the appeal of the Revenue the Court held that the basis of issuing notice under section 148 was on a wrong assumption of fact that the assessee had invested money with specified persons. The solitary reason recorded by the Assessing Officer for reopening of the assessment was deleted by the Commissioner (Appeals) and in such circumstances, the assessment under the other heads done by the Assessing Officer which were not shown as reasons for reopening was illegal.(AY.2009-10)

CIT (E) v. B. P. Poddar Foundation for Education (2022)448 ITR 695 (Cal)(HC)

S. 147 : Reassessment-Best judgment assessment-Capital gains-Reasons recorded non-existent-Notice and subsequent reassessment order quashed [S. 45, 144, 144B 148, Art, 226]

Allowing the petition the Court held that the reasons recorded by the assessing authority for assuming was unfounded, non-existent.The assessing authority had formed the reasons to believe on the ground that the assessee had sold an immovable property and earned capital gain during the financial year 2012-13 relevant to the assessment year 2013-14 but it was not shown in his return of income. The assessing authority could not have assumed jurisdiction to issue the notice under section 148, therefore, the notice itself was without jurisdiction and unsustainable. Consequently, the reassessment order passed was quashed. AY.2013-14)

Prakhar Tandon v. Assessing Officer (2022)448 ITR 177/ 288 Taxman 133 / 220 DTR 195 (All)(HC)

S. 147: Reassessment –Reasons recorded unfounded-No failure to disclose material facts-Strictures-Violation of principle of natural justice-Notice without jurisdiction-Reassessment done without adhering to the rule of law-Illegal demand and order quashed-Cost of 50,00,000 was awarded on Department-Government to frame Circular-Alternative remedy is not a bar to maintain writ petition. [S. 144B, 148, Art, 226]

Reassessment notice was issued on the basis that the huge cash was deposited in the Bank where as no cash was deposited in to the Bank**.** That despite the assessee's specific submission that it had not deposited any cash in the bank account with Bank of Baroda, the respondents had neither considered the reply nor had recorded any reasons for its rejection and passed the order. On writ allowing the petition the Court held that the Department

created a huge demand on the basis of false 7 factually incorrect information without considering the response of the assessee. Court held that failure to record reasons, failure to consider admissible evidence or consideration of inadmissible evidence renders the order unsustainable. Court also observed that it is settled law that if a public functionary acts maliciously or oppressively and the exercise of power results in harassment and agony then it is not an exercise of power but its abuse. No law provides protection against it. Harassment by public authorities is socially abhorrent and legally impermissible and causes more serious injury to society. In modern society no authority can arrogate to itself the power to act in a manner which is arbitrary. Court awarded cost of Rs. 50,00,000/-and further the Government was directed to frame a Circular to ensure the following:

1. To ensure that all necessary steps are taken within one month and a mechanism is developed and is put in place within one month so that assessees may not be harassed and may not suffer on account of their own fault of the department in its data-base/ portal.
2. To provide a mechanism and put it in place within one month from today that the information fed on database/ portal is verified in reality and not as an empty formality before initiating proceedings under Section 148A/ 148/147 of the Act, 1961 so that on one hand bona fide assessees may not face harassment and on the other hand tax evaders may not escape due to lapses of departmental officers.
3. To consider to develop a mechanism of the accountability of the officers who either do not observe statutory provisions of the Act, 1961 or fail to discharge their quasi-judicial function or act in complete breach of principles of natural justice (AY. 2017-18)

S.R. Cold Storage v. UOI (2022) 448 ITR 37 / 217 DTR 102/ 328 CTR 272 / 289 Taxman 580 (All)(HC)

S. 147: Reassessment-With in four years-Change of opinion-Specific query is raised in the course of assessment proceedings-It was not for the assessee to tell the Assessing Officer how he had to complete the assessment-Reassessment notice is not valid-Writ is maintainable. [S. 35D, 37(1), 148, Art, 226]

Allowing the appeal against the order of single judge the Court held that the reopening of the assessment under section 147 was without jurisdiction. The Act does not provide for any remedy against the order disposing of the objections by the Assessing Officer and therefore, writ petitions filed under article 226 are maintainable and the court would be entitled to consider whether the reopening was justified and whether the parameters, which were required to be fulfilled, while invoking the provisions of section 147 or section 148 stood attracted. The writ petition was maintainable against the order disposing of the objections of the assessee and the court could scrutinize whether the reopening was on a change of opinion and there was any attempt to review the original order of assessment. However, there could

not be an adjudication into the merits or roving enquiry into the merits of the assessment to conclude whether the reopening was justified or not. Prima facie, the Assessing Officer should be able to establish that the reopening of assessment was not on account of a change of opinion, be it within four years or beyond four years.Court also held that what the Assessing Officer had purported to do was to review his earlier decision. It was not for the assessee to tell the Assessing Officer how he had to complete the assessment. The duty of the assessee was to make a full and true disclosure of all materials and if put on notice calling for additional materials, to fully and truly disclose all materials. Thereafter, it was for the Assessing Officer to take a call on the materials and whatever was the concern, it was to be traced in the assessment under section 143(3). The Assessing Officer, while disposing of the objections had not touched upon the issue raised by the assessee relating to jurisdiction. The matter could not be remanded to the Assessing Officer for a fresh consideration since the power to reopen was a very powerful tool which was required to be exercised in accordance with law and not otherwise. Reassessment notice was quashed. Referred Calcutta Discount Co Ltd v. ITO (1961) 41 ITR 191 (SC), Whirpool Corporation v. Registrar of Trademarks (1998) 8 SCC 1 (AY.2010-11)

Financial Software and Systems Pvt. Ltd. v Dy. CIT (2022)447 ITR 357 / 218 DTR 490/329 CTR 37 (Mad)(HC)

Editorial : Decision of single judge set aside, Financial Software and Systems (P.) Ltd. v. Dy. CIT (2021) 283 Taxman 165 /(2022)447 ITR 352/ 218 DTR 497 /329 CTR 44 (Mad)(HC)

Order of division bench is affirmed by Supreme Court in Dy. CIT v. Financial Software and Systems Pvt. Ltd(2022)) 447 ITR 370(SC)

S. 147 : Reassessment-Material leading to prima facie belief that income had escaped assessment-Reassessment notice is valid [S. 148, Art, 226]

Dismissing the petition the court held the notice issued by the Assessing Officer after conducting an investigation and going through the Income-tax return and other related documents of the assessee and after recording a reason to believe that the assessee had not truly and fully disclosed all the material facts, because of which income amounting to Rs. 2,62,56,303 had escaped assessment. There was prima facie material available on record before the Assessing Officer for issuing a notice under section 148 of the Act. Reassessment notice is held to be valid. (AY.2013-14)

Distributors India's Logistics v. UOI (2022)447 ITR 615 /288 Taxman 594 (All)(HC)

S. 147 : Reassessment-Order passed without considering objections to notice of reassessment-Order not valid [S. 148, Art, 226]

Allowing the petition the Court held that the assessee had tried to explain the transactions in issue while putting forward its objections. However there was no meaningful discussion regarding them in the order disposing of the objections. In fact, none of the objections raised by the assessee could be said to have been taken into consideration by the Assessing Officer in a meaningful manner. Hence the order passed by the Assessing Officer while disposing of the objections was not valid.(AY.2014-15)

Kalupur Commercial Co-Operative Bank Ltd. v.ACIT (2022)447 ITR 630 (Guj)(HC)

S. 147:Reassessment-Subsequent discovery by Income-Tax Investigation wing that transaction was bogus-The notice of reassessment is valid [S. 148, Art, 226]

Dismissing the petition the Court held that having regard to the materials on record it could not be said that there was total non-application of mind on the part of the Assessing Officer while recording the reasons for reopening of the assessment. It also could not be said that his conclusion was merely based on the observations and information received from the Investigation Wing. The Assessing Officer could be said to have applied his mind to the same. Hence the notice for reassessment was valid.(AY.2012-13)

Pushpa Uttamchand Mehta v. ITO (2022)447 ITR 476/ 287 Taxman 483 (Guj)(HC)

S.147: Reassessment-No objection raised to notice of reassessment in the assessment and appeal before CIT(A)-Participating in reassessment proceedings-Tribunal considering material on record and upholding reassessment proceedings-Order of Tribunal is up held.[S.143(1), 148, 260A]

Dismissing the appeal the Court held that the assessee neither raised any objection to the notice issued under section 148 of the Act at the relevant point of time nor raised such issue or objection even during the course of assessment and participated in the assessment proceedings by filing reply. Even before the Commissioner (Appeals), no ground was raised with regard to the reopening of the assessment. The assessee for the first time challenged the reopening before the Tribunal by raising the ground which the Tribunal decided after considering the materiel on record. While considering a second appeal under section 260A of the Act, it would not be possible to verify and justify with regard to the sufficiency of the reasons which even otherwise could not have been considered by the court while exercising extraordinary jurisdiction under article 226 of the Constitution of India. The reassessment proceedings were valid.(AY.2009-10)

Ranjitsinh K. Rathod v. ITO (2022)447 ITR 690 (Guj)(HC)

S.147 : Reassessment-Bad debt-Involved mixed questions of fact and law as to validity of reopening and taxability of amount received under debt waiver scheme, the High Court was not a proper forum to decide such mixed question and matter was to be remanded back to AO.[S. 36(1)(viia), 254(1), 260A]

The Assessee being a nationalised bank had claimed deduction u/s 36(1)(viia) of the Act on account of provision for bad and doubtful debts which was allowed in original assessment order passed u/s 143(3) of the Act. The AO thereafter issued a reopening notice against

Assessee-bank on ground that an amount of loan repaid by Government to Assessee-bank on behalf of farmers under debt waiver scheme was liable to be brought to tax as said amount was already allowed as bad debt, and hence AO passed a reassessment order making addition on account of such amount of loan. Assessee-bank contended that such amount being reimbursed by Government was only repayment of loan paid by Government instead of farmers and same could never be treated as income of Assessee-bank, hence, there was no new tangible material based on which assessment was reopened by AO. The CIT(A) and Tribunal however referred the matter back to AO. The High Court considering the above facts remanded the matter to the AO, stating that the Income-tax Act is a self-contained Act and this Court u/s 260A of the Act in its appellate jurisdiction, is not the proper forum for deciding mixed questions of fact and law, with a direction to AO to consider all the issues raised by the Assessee-bank, without being influenced by any of the observations made by the Tribunal, and pass orders afresh, after providing reasonable opportunity to the Assessee-bank. (AY 2011-12)

Indian Overseas Bank.v. ACIT (2022) 138 taxmann.com 501 (Mad) (HC)

S. 147 : Reassessment-Penny Stock –Bogus capital gains-Accommodation entries-Information from Investigation Wing-Reassessment notice is valid [S. 68, 69, 148 Art, 226]

Dismissing the petition the Court held thatthe Assessing Officer had information in form of accounts/documents received from Investigation wing that Unisys Softwares and Holding Industries Ltd was a company run, managed and operated by entry providers and it was a penny stock and had been used by operators to provide exempt LTCG/Short Term Capital Loss and assessee was one such operator. There was sufficient material available on record for Assessing Officer to form a reasonable belief and there was a live link existing of material and income chargeable to tax that escaped assessment.It could not be said that Assessing Officer, on absolutely vague or unspecific information, initiated proceedings of reassessment without taking pains to form his own belief in respect of such materials. (AY. 2012-13)
Pushpa Uttamchand Mehta v. ITO (2022) 287 Taxman 483 / 114 CCH 314 (Guj.) (HC)

S. 147 : Reassessment-Cash credits-Information from Investigation Wing-Search and Seizure-Purchase of property-Cash payment-Reassessment notice is valid [S. 132, 143(1), 148, Art, 226]
Re assessment notice was issued based on the information received from Investigation Wing. The Assessing Officer recorded the reasons that for purchase of property cash payments were made. The Assessment was processed u/s `143(1) of the Act. On writ dismissing the petition the Court held that the reason to believe recorded by Assessing Officer was not on basis of any books of account or document seized by Investigating Wing in search conducted on Celebration City Projects (P) Ltd neither notice issued under section 148 suffered from any illegality nor order rejecting objection of assessee suffered from any infirmity. (AY. 2016-17)
Pushpa Yadav v. ITO (2022) 287 Taxman 305/ 215 DTR 66/ 327 CTR 333 (All.)(HC)

S. 147 : Reassessment-Unexplained moneys-Cash deposited in bank-Demonetization period-Explanation was furnished in the assessment proceedings-Reassessment proceedings on same set of facts would amount to mere change of opinion-Notice was quashed [S. 69A, 148, Art, 226]

Allowing the petition the Court held that during scrutiny Assessing Officer called for details related to cash deposited by petitioner in bank and assessment order was passed after accepting submission made by petitioner Since the Assessing Officer consciously applied his mind during regular assessment to cash deposited in bank by petitioner, initiation of reassessment proceedings on same set of facts would amount to mere change of opinion. Notice was quashed. (AY 2017-18)

Awlesh Kumar Singh v. UOI (2022) 287 Taxman 596 (All.)(HC)

S. 147 : Reassessment-Unexplained expenditure-Information from investigation wing-Overdraft account-Interest free loan-Reassessment notice is justified [S.69C, 148, Art, 226]

Dismissing the petition the Court held that the Assessing Officer noticed that petitioner paid significant amount to his son from an overdraft (OD) bank account owned by petitioner as interest free loan and significant interest expense were being incurred by petitioner on said sum drawn from OD. Notice for reopening of assessment is held to be valid. (AY 2010-11)

Kedar Nath Babbar v. ACIT (2022) 287 Taxman 417/ 215 DTR 227 / 329 CTR 131 (Delhi)(HC)

S. 147 : Reassessment-Deposit of cash in Bank-Unexplained money-Demonetization deposit-No supporting evidence was available-Reassessment notice was justified [S. 69A, 148, Art, 226]

Assessee deposited Rs. 11.40 lakhs in cash in his bank account during demonetization. Though said entry was reflected in his return of income, yet no supporting evidences were available to prove source of such deposit. Reassessment notice was challenged. High Court dismissed the petition. referred Raymond Woollen Mills Ltd v.ITO (1999) 236 ITR 34 (SC)) (AY. 2017-18)

Sanjay Kapur v. ACIT (2022) 138 taxmann.com 206 (Delhi)(HC)

Editorial : SLP of assessee dismissed as withdrawn, Sanjay Kapur v. ACIT (2022) 287 Taxman 225 /113 CCH 160 (SC)

S. 147 : Reassessment-Principles of Natural justice-Order passed without giving adequate time to respond to show-cause notices-Order set aside-Matter remanded.[S. 148, Art, 226]

Held, that a fair opportunity was not given to the assessee even after the show-cause notices dated March 24, 2022. The assessment orders dated March 28, 2022 were passed in violation of the principles of natural justice and therefore, were quashed and set aside. The matters were remitted back to the Deputy Commissioner for reconsideration and the assessee could treat the show-cause notices dated March 24, 2022 as fresh notices. Except the quashing of the assessment orders dated March 28, 2022, all other prayers sought for by the assessee were rejected. Matter remanded.(AY. 2015-16, 2016-17)(SJ)

International Seaport Dredging Pvt. Ltd. v. NFAC (2022)446 ITR 246 (Mad)(HC)(HC)

S. 147 : Reassessment-Donation to Institution –Survey-Subsequent withdrawal of approval with retrospective effect-Notice of reassessment is valid [S. 35(1)(ii), 133A, 148, Art, 226]

Dismissing the writ petition, that the indisputable fact was that the assessment in the case of one of the assessees was completed even before the completion of the survey proceedings (though the assessment proceedings in the other two writ petitions were completed after the survey. The nature of the information shared by the assessee's accounts officer, showed that the threshold bar for initiation of the reassessment proceedings was satisfied. At this stage, the Assessing Officer's subjective prima facie opinion, though based on the records made available during the assessment proceedings, was because of further enquiry into the affairs of H, and this was not a case of change of opinion. The contention that the assessee's only obligation in law once approval was granted under section 35(1)(ii) of the Act was to file a copy of the approval and the details of the donations made, and even if the approval was later withdrawn retrospectively because of certain allegations against the entity which was granted approval, the concluded assessment proceedings could not be reopened, this would have to be examined as part of the reassessment proceedings based on the further material that would be made available on record by the assessee and would not be a reason for interference at this stage. The notice of reassessment was valid.(AY. 2012-13, 2013-14, 2015-16)(SJ)
Jindal Naturecare Ltd. v. ACIT (2022)446 ITR 187 / 215 DTR 113 (Karn)(HC)
Jindal Aluminium Ltd. v. Add. CIT (2022)446 ITR 187/ 215 DTR 113 (Karn)(HC)

S. 147 : Reassessment-Transactions discovered to be non-genuine by Income-Tax Officer (Inv)-Notice valid-Sanction-Order of sanction to be tested along with reasons for notice. [S. 131A, 148, 151, 282A, Art, 226]

Dismissing the petition the Court held that the reasons assigned for the notice of reassessment showed that the Assessing Officer, based on information of suspicious transactions report from the Income-tax Officer (Inv), has verified the transactions. Notice under section 131A of the Act was also issued and statements were recorded including of one SKM. Based on the statements, the Assessing Officer recorded that the assessees obtained bogus purchase bills during the relevant period. The Revenue had placed on record copy of screen shot of Income-tax Business Application web portal in which there was mention of "print approval" against the name of respective assessee with the director identification

number. The sanction or approval under section 151 of the Act issued by the competent authority in the case of the assessees would be deemed to be an authenticated document. The notice of reassessment was valid.(AY. 2016-17)

Jugal Kishore Paliwal v. JCIT (2022) 446 ITR 515 / 213 DTR 121 / 326 CTR 361 (Chhattisgarh)(HC)
Saraswati Agro Industries (2022) 446 ITR 515 213 DTR 121 / 326 CTR 361 (Chhattisgarh)(HC)
Vidhya Nagdeo (Smt.) v. JCIT (2022)446 ITR 515 213 DTR 121 / 326 CTR 361 (Chhattisgarh) (HC)

S. 147 : Reassessment-Participated in the proceedings--Order of reassessment is valid [S. 142(1), 148, Art, 226]

Held, dismissing the writ petition, that the assessee himself had actively participated in the assessment proceedings by complying with the notices under section 142(1) of the Income-tax Act, 1961 and had himself repeatedly requested the Assessing Officer to complete the reassessment proceeding under section 147 of the Act which were all matters of record. The Assessing Officer had rightly completed the assessment and passed the final assessment order which was appealable under the statute.(AY. 2017-18)

Lakshman Prasad Agarwal v. UOI(2022) 446 ITR 692/ 215 DTR 349 / 327 CTR 320 (Cal)(HC)

S. 147 : Reassessment-Survey-Information from investigation wing-Live link-Sufficiency of material cannot be considered at stage of notice-Notice valid.[S. 133A,148, 151, 153C,Art, 226]

Held, dismissing the writ petition, that the decision to reopen was based on tangible information, which was not in the possession of the officer at the time of carrying out the assessment proceedings. The information was revealed during the survey proceedings under section 133A of the Income-tax Act, 1961, and therefore the reopening under section 148 would be the proper course of action since proceedings under section 153C would be the result of search proceedings under section 132A and not survey proceedings under section 133A. Furthermore, the reliance placed on Instruction No. 1 of 2011 [F.No. 187/ 12/2010-IT (A)n-1)) dated January 31, 2011 was also misplaced since that was with respect to assessment proceedings and not proceedings initiated pursuant to section 148 of the Act. Reading such instructions to override the effect of section 148 read with section 151 of the Act would be contrary to the intent. The notice of assessment was valid.(AY. 2011-12)

Rajesh Jayantilal Patel v.Dy. CIT (2022)446 ITR 313 / 216 DTR 137 (Guj)(HC)

S. 147 : Reassessment-No tangible material-Notice not valid [S. 148, Art, 226]
Held that the reassessment proceedings in respect of the polytechnic were patently illegal, bad in law and without the fundamental requirement for acquiring the jurisdiction under section 147 / 148 that the income should have escaped the assessment.(AY. 2009-10)

Sardar Vallabhbhai Patel Education Society v. ITO (2022)446 ITR 278 (Guj)(HC)

S. 147 : Reassessment-Order passed after considering the objections-Assessment order was passed-Writ is not maintainable [S. 148, Art, 226]

Dismissing the petition the Court held that that the allegation of the assessee was that, pursuant to the notice under section 148 of the Act, when an objection was submitted by the assessee, no speaking order was passed on it, rather an assessment order was passed directly. The contention did not take note of the fact that while sending the show-cause notice and draft assessment order on September 24, 2021, the order on the objections was also sent, after dealing with the objections. When no response to the show-cause notice along with the draft assessment order was received, the final assessment order was passed on September 28, 2021. Hence in view of the facts it was not a case where a writ petition could be maintained directly challenging the assessment/reassessment order.(AY. 2015-16)

Tamil Nadu State Marketing Corporation Ltd. v. NEAC (2022)446 ITR 325 (Mad) (HC)

S. 147 : Reassessment-Writ-Territorial jurisdiction of High Court-Cause of action-Permanent Account Number Card having Cuttack address-Residential address in Ahmedabad-Amendment of Article 226 in 1976-The validity of the reassessment notice would not be considered by the Gujarat High Court [S. 148, Code of Civil Procedure, 1908, 20(6),Art, 226(2)]

The applicant has a residential address at Ahmadabad. The notice under section 143(2) of the Income-tax Act, 1961 at his residential address at Ahmadabad, State of Gujarat. The applicant is assessed to tax at consistently at Cuttack. The return was filed at Cuttack. The notice u/s 148 of the Act was issued by the Cuttack Assessing Officer. The Assessment order was passed at Cuttack. The applicant filled writ petition in Gujrat High Court. Dismissing the petition the Court held that even in a scenario where a part cause of action has arisen within one High Court's territorial jurisdiction, the High Court can still refuse to exercise jurisdiction under article 226 on account of other considerations as defined under the concept of forum convenience. Just because a notice under section 143(2) of the Income-tax Act, 1961 came to be issued to the assessee at his residential address at Ahmedabad, that by itself, would not confer jurisdiction on the Gujarat High Court, more particularly, when the assessee was being assessed to tax consistently at Cuttack. The assessee had a permanent account number card at such place. The notice under section 148 of the Act, was issued at Cuttack. The return of income for the assessment year 2015-16 was also filed at Cuttack. The final assessment order dated December 29, 2017 for the assessment year 2015-16 was also

passed at Cuttack. The validity of the reassessment notice would not be considered by the Gujarat High Court.(AY.2015-16)

Bhavendra Hasmukhlal Patadia v. UOI (2022)445 ITR 410/ 214 DTR 209/ 326 CTR 809 (Guj)(HC)

S. 147 : Reassessment –With in four years-Change of opinion-Payment to related parties-Failure to deduct tax at source-Allowed claim without speaking order-Re assessment notice-Not valid [S. 40A(2)(b), 148,194C, Evidence Act, 1872 S. 114(e), Art, 226]

Allowing the petition the Court held that the assessee had furnished details relating to Broadcom Communications Technologies Ltd. After details were furnished, the assessment order was issued on November 22, 2016 without any additions, or rejection. The notice of reassessment had been issued because the Assessing Officer was of the opinion that though the assessee had paid sub-contractor charges to Broadcom Communications Technologies Ltd, the assessee had not deducted the tax at source for the entire amount. On this issue it had to be presumed that there had been conscious application of mind and therefore a deemed opinion, and there could not be reassessment only because an error in such opinion. The reason offered by the Assessing Officer to justify the reassessment could not be accepted as an objective view based on any subsequent information in the absence of necessary material in this regard. The notice of reassessment was not valid.(AY.2014-15) (SJ)

LSI India Research and Development P. Ltd. v. Add. CIT (2022)445 ITR 183/ 214 DTR 330 / 329 CTR 637 (Karn)(HC)

S.147: Reassessment-Date of issue and service of notice-Digital signature of Authority dated March 31, 2021-Notices Issued through Electronic mode on March 31, 2021 prior to amendment in law from April 1, 2021 and deemed to be served [S. 148,149, 282, 282A, TOLA Act, 2020, S. 3(1), IT Rules 1962, R 127A(1), Art, 226]

Dismissing the petitions, the Court held that the notices were issued on March 31, 2021 through email and under rule 127A(1) of the Income-tax Rules, 1962 they were deemed to be authenticated if the name and office of the authority were printed on the email body or was printed on the attachment to the email. The notices showed the name and office of the authority printed on the attachment to the email. The assessees could not bring any fact on record to show that the notices under section 148 were not issued by the electronic mode, i.e., by email, on March 31, 2021 and, that too, when the fact regarding digital signature of the authority could not be disputed. The digital signature of the authority was also on March 31, 2021 and, therefore, the notices were not issued on or after April 1, 2021, rather issued prior to the date. Writ petitions dismissed. (AY.2013-14)

Malavika Enterprises v. CBDT(2022)445 ITR 651/ 287 Taxman 693 / 218 DTR 153 / 328 CTR 853 (Mad) (HC)

S. 147 : Reassessment-Show cause notice-Alternative remedy-Time granted to file reply only two days-Directed to provide time of 10 days to file the reply-Appeal Lies from order of reassessment-Writ is not maintainable [S.148, 246A, Art, 226]

Court held that an order passed under section 147 of the Income-tax Act, 1961 is an appealable order in terms of section 246(1)(b) of the Income-tax Act, 1961, the assessee could avail of the alternative remedy available by approaching the appellate authority.

However, keeping in view the fact that the assessee had been given only two days' time to file a reply to the show-cause notice dated March 25, 2022 the respondents should give the assessee a further ten days' time from today for filing his reply to the show-cause notice dated March 25, 2022.(AY.2015-16)(SJ)

Sharda Lunkar v.UOI (2022)445 ITR 285/ 219 DTR 147 / 329 CTR 281 (Gauhati)(HC)
S. 147 : Reassessment-Alternative remedy-Writ against reassessment order was dismissed [S. 148, Art, 226]

Reassessment was made under section 147 on issue of notice under section 148 against the assessee. Though the assessee raised various objections to the notice no revised return was filed by the assessee which according to him was due to technical glitches. However, in the reassessment proceedings no such issue was raised before the Assessing Officer. The Assessing Officer considered the objections raised by the assessee and passed an assessment order. On a writ petition dismissing the petition, that on the facts none of the exceptions to interfere with the order in writ jurisdiction under article 226 was attracted. The assessee was given repeated notices and adequate opportunity to represent his case before the Assessing Officer. Therefore, the order did not suffer either from inherent lack of jurisdiction or breach of principles of natural justice. Hence, the order need not be interfered with. Writ petition was dismissed. Referred, Whirlpool Corporation v. Registrar of Trade Marks, Mumbai [1998] 8 SCC 1 and CIT v. Chhabil Dass Agarwal (2013) 357 ITR 357 (SC)

Thota Venkateswara Rao v. NFAC (2022)445 ITR 460 (AP)(HC)

S. 147 : Reassessment-Failure to show remuneration and interest on capital received from partnership firm-Reassessment notice was quashed [S.28(i), 148, Art, 226
Assessee was a partner in a firm.Assessing Officer reopened assessment on ground that she failed to show remuneration and interest on capital received from partnership firm in return of income filed. Assessee filed objections pointing out that she had not received any income in form of remuneration and interest on capital from partnership firm and, therefore, there was no question of adding such income or showing such income in return of income. Assessing Officer disposed of objections raised by assessee on ground that assessee had received share of profit from firm and such share received by assessee as per partnership deed would include remuneration and interest on capital which had not been debited from profit and loss account of firm On writ the Court held that Tribunal while deciding appeal of aforesaid partnership firm in respect of assessment year 2011-12 adjudicated controversy as regards deduction of remuneration and interest on partners' capital not claimed by partnership in its profit and loss account and held that there was no good ground to tax remuneration and interest on capital in hands of partners. Accordingly the reopening of assessment was quashed and set aside. (AY. 2006-07)
Mamta Bhavesh Deva. v. ITO (2022) 446 ITR 578 / 286 Taxman 692 (Guj)(HC)

S. 147 : Reassessment-Speaking order-Order passedwithout passing a speaking order-Order was set aside-Directed to pass speaking order [S. 143(3), 148, Art, 226]

Allowing the petition the Court held that once a notice under section 148 was issued and reasons were given thereafter, it was incumbent on part of revenue to have passed a speaking order. Accordingly the reassessment order passed by Assessing Officer was to be set aside and remanded back to Assessing Officer to pass a speaking order. (AY. 2011-12) (SJ)

Fast Finance (P) Ltd v. ACIT (OSD) (2022) 446 ITR 378 / 286 Taxman 455 (Mad.)(HC)

S. 147: Reassessment-Issue of notices to wrong e-mail address is not valid-Reassessment order was set aside [S. 127, 148, 282, Art, 226]

The notices were issued to wrong e mail id and order was passed. On writ allowing the petition the Court held that the notices and assessment order were issued to a wrong e-mail address which was in violation of principles of natural justice. Without venturing into the question as to who was to be faulted for the non-service of communications, in the facts and circumstances, particularly, the fact that the assessee did not get opportunity to put forth its responses to the notices leading to the issuance of the assessment order, to meet the ends of justice, the order of assessment had to be quashed. (SJ)

Four Star Granite Pvt. Ltd. v. Dy. CIT (2022) 444 ITR 161 (Ker)(HC)

S.147:Reassessment-No new material-Original assessment order passed after application of mind-Change of opinion-Reassessment notice is unsustainable [S. 143(3), 148, Art, 226]

On a writ petition the assessee contended that the issue of notice under section 148 and initiation of the reassessment proceedings was based merely on a change of opinion. Allowing the petition the Court held that the assessment order revealed that the Assessing Officer had applied his mind to the documents and records produced before him by the assessee in the regular assessment which included the balance sheet, profit and loss account and other relevant documents. Therefore, the reopening of the assessment under section 147 was not based on any new material. The notice issued under section 148 was quashed. CIT v. Kelvinator of India Ltd (2010) 320 ITR 561 (SC) followed. (AY. 2009-10)

Rama Devi Sabat v. Dy. CIT (2022) 444 ITR 301/ 209 DTR 196/ 324 CTR 241 (Orissa) (HC)

S. 147 : Reassessment-Assessee can establish in reassessment proceedings that reasons were erroneous-DTAA-India-USA-Assessee directed to show in the reassessment proceedings that the assumption of facts made in the notice is erroneous. [S. 10(38), 148,Form No 15CA, Art, 226]

Notices were issued under section 148 of against the assessee for reopening the assessments. The reasons recorded stated that the notices were issued on the ground that the assessee's transactions for the financial years 2015-16 and 2016-17 were flagged in the Non-Filers Monitoring System (NMS) and that according to form 15CA, the assessee had made a remittance to its head office without deducting tax thereon claiming the payment to be tax-free under the Double Taxation Avoidance Agreement between India and the U. S. A. The

objections raised by the assessee were rejected. On a writ petition the Court held that the issue of dividend income and long-term capital gains on the sale of shares required a detailed consideration. The notices under section 148 had been issued within four years from the end of the relevant AYs and there had been no scrutiny assessments. Consequently, the test to be applied for reassessment, whether there was "reason to believe" that income chargeable to tax had escaped assessment, was satisfied. However, the contentions and submissions raised by the assessee were relevant and must be examined by the Assessing Officer while passing the reassessment order. The assessee could establish in the reassessment proceedings under section 147 that the assumption of facts made in the notices were erroneous.(AY. 2016-17, 2017-18)

SAIF II Mauritius Company Limited v. ACIT (IT) (2022) 444 ITR 501 (Delhi)(HC)
SAIF III Mauritius Company Limited v. ACIT (IT) (2022) 444 ITR 501 (Delhi)(HC)

S. 147: Reassessment-Prima facie basis for belief sufficient Survey of third person and statement during survey proceedings revealing alleged bogus nature of transactions-Of Assessee-Notice valid. [S. 148,153A, Art, 226]

Dismissing the petition the Court held, that the search assessment was finalised under section 143(3) read with section 153A of the Act on March 28, 2016. Thereafter, survey action under section 133A of the Act was conducted by the Investigation Wing on January 14, 2017 in the case of B, proprietor of Swastik Corporation. During the course of the survey action, a statement of Shri Bijal Ashok Shah was recorded on oath wherein he admitted that he was engaged in the business of providing accommodation entries to the beneficiaries in lieu of commission. Shri Bijal Ashok Shah also disclosed the modus operandi employed by him to provide the entries to the beneficiaries. Shri Bijal Ashok Shah in his statement, had also named the petitioner as one of the recipients of the accommodation entries. All these facts were not before the Assessing Officer at the time of finalization of the search assessment. The notice of reassessment based on these facts was valid. Refer,Amar Jewellers Ltd. v. ACIT (2022) 444 ITR 97/ 216 DTR 137 / 328 CTR 150/ 1**37 taxmann.com 249**(Guj)(HC) KKP Marketing (I) Ltd v. Dy.CIT(2022) 444 ITR 97/ 216 DTR 137 / 328 CTR 150/ 1**37 taxmann.com 249**(Guj)(HC) (AY.2013-14)

Amar Jewellers Ltd. v. ACIT (2022) 444 ITR 148/ 216 DTR 198 / 328 CTR 468 /139 taxmann.com 198 (Guj)(HC)

S. 147 : Reassessment-Information from Investigation Wing-Sanction of prescribed authority-Notice valid. [S. 148, 151 282A, Art, 226]

Dismissing the petition the Court held that the reasons assigned for issuance of the proposal under section 148 of the Act clearly mentioned about application of mind by the Assessing Officer based on information received from the Deputy Director of Income-tax (Investigation) and also about verification of the permanent account number details of the assessee. In the approval under section 151 the name, designation and office of the approving authority were printed. The notice of reassessment was valid.(AY. 2017-18) (SJ)

Bharat Krishi Kendra v.UOI. (2022) 444 ITR 584 / 212 DTR 137/ 326 CTR 45 (Chhattisgarh) (HC)

S. 147 : Reassessment-Opportunity of hearing-Question of facts cannot be raised in writ proceedings [S. 148, Art, 226]

Dismissing the writ petition the Court held that whether the opportunity of hearing was inadequate which affected his right to make a proper response, certainly that could be gone into by the appellate authority, since it may require examination of facts which could not be done in exercise of writ jurisdiction.(AY. 2017-18)

Chandra Sekar Reddy Bokkalapally v. NFAC (2022) 444 ITR 581 (Telangana) (HC)

S. 147 : Reassessment-Charitable purpose-Registration Exemption for assessment years prior to registration-Reassessment proceedings cannot be initiated on ground of non-registration.[S. 11, 12A, 12AA]

Dismissing the appeal of the Revenue the Court held that the only reason for reopening of the assessment was the absence of registration under section 12A of the Act. Further, the assessee had not filed return of income for the AY in question. A finding had been recorded on the facts of the case by the Tribunal on this aspect and the allegation that the assessee was claiming deductions under sections 11 and 12 of the Act was held to be against the facts available on record. Hence the reassessment was not valid.(AY. 2012-13)

CIT v. Karnataka State Students Welfare Fund (2022) 444 ITR 436 (Karn)(HC)

S. 147 : Reassessment-Collaboration agreements-Order of single judge set aside-Assessing officer directed to consider all the material and objections of the assessee. [S. 148, Art, 226]

Single judge dismissed the writ against the objections filed in response to reassessment proceedings On appeal Division Bench held, that the amount received by the assessee from the two companies had been taxed in the AY. 2005-06 and had also been accepted by the assessing authority in his assessment order. Without considering this, the Assessing Officer had reopened the assessment under section 147 stating that the assessee had failed to truly and fully disclose the material particulars at the time of original assessment. The order of the single judge was set aside. The order of the Assessing Officer rejecting the objection filed by the assessee to the reopening of the assessment was accordingly set aside. The assessee was directed to submit all the material evidence along with additional objection before the assessing authority for consideration on the merits and passing an appropriate order in accordance with law.(AY. 2003-04)

Revathi Equipment Ltd. v.ACIT (2022)443 ITR 262 (Mad) (HC)

Editorial: Decision of single judge in Revathi Equipment Ltd. v.ACIT (2021) 435 ITR 543 / 204 DTR 313/ 282 Taxman 232/ 204 DTR 313/ 322 CTR 703 (Mad)(HC) set side.

S. 147:Reassessment-Contingent liability claimed as revenue expense-Failure to consider submissions in order disposing of its objections-Notice and order disposing of objections quashed.[S. 148, Art, 226]

Allowing the petition the Court held that the order disposing of the objections was without application of mind since there were many repetitions therein and did not consider any of the contentions or submissions of the assessee. Since no useful purpose would be served the request of the Principal Commissioner for giving opportunity to file a counter affidavit was declined. The notice for reopening and the order disposing of the assessee's objections were quashed. In the event the Assessing Officer had some fresh material he was at liberty to take action in accordance with law and the assessee was at liberty to file appropriate proceedings.(AY. 2015-16)

Kurz India Pvt. Ltd. v. PCIT (2022)443 ITR 191 (Delhi)(HC)

S. 147 : Reassessment-Revaluation of asset of firm-Transfer of revalued reserve to partners' accounts-Section 45(3) is applicable in year of transfer of capital asset by partner to firm by way of capital contribution-Re valuation is not colourable device-Reassessment is not valid. [S.10(2A) 45(3) 148, 260A]

The assessment was reopened on the ground that the firm had revalued its assets and transferred the revalued reserve to its partners' accounts and the assessee being a partner had received a certain sum of money on account of such revaluation reserve and that such income had escaped assessment. The Assessing Officer held that section 45(3) was applicable in respect of such transfer made during the previous year relevant to the assessment year 2008-09, that the revaluation sum recorded in the books of account of the firm as on March 31, 2008 was to be deemed the full value of consideration received or accruing as a result of transfer of the capital asset by way of capital contribution, that the revaluation amount was the profit which accrued to the three assessees and that each of them was liable to tax on one-third of the revaluation profit as short-term capital gains. The Commissioner (Appeals) held that revaluation of an asset was not a business transaction resulting in any pecuniary gain which could form subject matter of taxation and allowed the assessees' appeals. The Tribunal held on the facts that, if at all any income accrued or arose owing to revaluation of the assessee it was an issue which had to be dealt with in the assessment of the firm which was a separate taxable entity and that invoking of section 45(3) which had no application in the assessment year 2008-09 was unjustified since the year of transfer of reserve was the financial year ended March 31, 2006 and that notwithstanding that the State Government had revised the guideline value for the purpose of stamp duty between 2004-and 2007, in accordance with the accounting principles the land held as inventory was shown at its cost and therefore no undervaluation was done by the assessee, that after conversion of inventory into fixed asset the firm revalued the developed land including the construction thereon in order to bring it in line with the current market value to justify the business assistance secured by the firm from the banks to the extent of Rs. 250 crores and that therefore, the revaluation of the asset was not a colourable device. On appeal the High court affirmed the order of the Tribunal.(AY.2008-09)

PCIT v. Blue Heaven Griha Nirman Pvt. Ltd. (2022)441 ITR 621 /285 Taxman 663/ 211 DTR 376/ 326 CTR 74 (Cal) (HC)

PCIT v. Wellgrowth Grihanirman Pvt Ltd(2022)441 ITR 621/ 285 Taxman 663 / 211 DTR 376/ 326 CTR 74 (Cal) (HC)

PCIT v. Orchid Griah Nirman Pvt Ltd (2022)441 ITR 621/ 285 Taxman 368 / 211 DTR 376/ 326 CTR 74 (Cal) (HC)

S. 147 : Reassessment –With in four years-Income from other sources-Valuation of shares-Order of single judge allowing the writ petition is affirmed [S. 56(2))viib), 148, Art, 226]

The assessing Officer has initiated the reassessment on ground that assessee had issued preference shares of face value of Rs. 10 each at premium of Rs. 488 per share but market value of each share was Rs. 25.20 only and consideration received from issue of shares which exceeded face value of such shares was required to be assessed to tax under section 56(2)(viib) of the Act. Learned single quashed the reassessment proceedings on the ground that no tangible material or fresh material had come to notice of Assessing Officer, and further Assessing Officer had, in fact, made a modification to valuation of first lot of shares during original assessment. On appeal division bench affirmed the order of the single judge and held that reassessment notice was not valid. (AY. 2014-15)

ITO v. Shivsu Canadian Clear Waters Ltd. (2022) 284 Taxman 660 / 214 DTR 254 / 327 CTR 345 (Mad.)(HC)

S. 147 : Reassessment –With in four years-Deduction at source-Non-resident-Foreign currency loan-Guarantee interest-Material available was not taken in to consideration in original assessment proceedings-Re assessment notice was held to be valid [S. 148, 195, Art, 226]

Dismissing the petition the Court held once materials were available and such materials were not taken into consideration by original Assessing Authority, if authorities based on said material found that tax had escaped assessment, then they would be empowered to reopen proceedings. (AY. 2007-08)(SJ)

Cairn India v. Dy. DIT(IT) (2022) 284 Taxman 68 (Mad.)(HC)

S. 147 : Reassessment-Unexplained money-Rotation of undisclosed income-FIR filed by CBI-Writ petition was withdrawn. [S. 69A, 148, Art, 226]

Reopening proceedings had been initiated by Assessing Officer after satisfaction with independent application of mind and also recording reasons in writing. The Assessee filed the writ petition. After hearing both sides and examining the materials on record and FIR filed by CBI the Court was not inclinedto entertain the petition. Petition was withdrawn. (AY. 2012-13)

Satva Merchandize (P.) Ltd. v. ITO (2022) 284 Taxman 336 (Guj.)(HC)

S. 147 : Reassessment –With in four years-Change of opinion-No tangible material-Not valid [S. 148, Art, 226]

Allowing the petition the Court held that the reasons for reopening the assessment did not point to any new material that was available with the Department. The same material, viz., the accounts produced by the assessee were re-examined and a fresh opinion was arrived at. In fact, a questionnaire had been issued by the Assessing Officer in the course of the original assessment proceedings to the assessee to which the assessee had responded. Reassessment notice was quashed.(AY.2009-10)

Sri Jagannath Promoters and Builders v. Dy. CIT (2022) 440 ITR 192/ 209 DTR 188/ 324 CTR 233/ 284 Taxman 469 (Ori) (HC)

S. 147 : Reassessment –With in four years-Where the necessary details were disclosed, reopening is not valid. [S. 54, 148, Art, 226]

The Assessing Officer initiated reassessment proceedings on the ground that the assessee had failed to file several details pertaining to its claim of deduction under section 54 of the Act such as proof of cost of improvement etc. Held that the assessee's computation of capital gains after considering the deduction claimed under section 54 of the Act was on record. Further, the details regarding the cost were also filed. Therefore, the Assessing Officer proceeded on a wrong presumption that the details were not on record. Accordingly, he could not have recorded a reason to believe that income chargeable to tax had escaped assessment and the proceedings were to be quashed. (AY. 2012-13)

Bankim Bhagwanji Chaauhan v. ITO (2022) 440 ITR 485 (Guj) (HC)

S. 147 : Reassessment –With in four years-Where the necessary details were disclosed, reopening is not valid. [S. 148, Art, 226]

The Assessing Officer sought to reopen an assessment on the ground that due to delay in submission of TP study, the arm's length price of the transaction could not be examined. Quashing the proceedings, the High Court held that Form 3CEB as well as the TP study were filed in time and that it was apparent from the record that the Assessing Officer had decided to neither refer the matter to the Transfer Pricing Officer nor did he himself examine the transactions. Having done so, he could not change his opinion and reopen a concluded assessment. (AY.2013-14)

JRS Pharma and Gujarat Microwax Pvt. Ltd. v. Dy.CIT (2022) 440 ITR 557 (Guj) (HC)

S. 147 : Reassessment – After the expiry of four years – Bogus purchase- No disallowance made on account of bogus purchase - Reassessment proceedings quashed. [S.69C , 148]

Held, that the reasons for which the assessment of the assessee was reopened was only to make the disallowance on account of bogus purchases. Since, no disallowance was made in the reassessment proceedings on account of bogus purchases, the very basis of the reopening failed. (AY. 2007 -08)

Basant Dharmichand Jain v. Dy. CIT (2022)98 ITR 694 (Mum) (Trib)

S. 147 : Reassessment – After the expiry of four years - No failure to disclose material facts – Audit objection – [S. 40(a)(ia), 143(3), 148]

Held that the assessment was reopened not for any failure on the part of the assessee to disclose fully and truly all the material facts necessary for its assessment, but on the basis of an audit objection raised by the internal audit party. Apart from that, there was no whisper in

the "reasons to believe" that the case of the assessee was being reopened for any failure on its part to disclose fully and truly material facts that were necessary for its assessment for the year under consideration. Thus, the reopening was not maintainable and the assessment framed by the Assessing Officer under section 143(3) read with section 147 , was liable to be quashed for want of valid assumption of jurisdiction by the Assessing Officer.(AY. 2008-09)

Shree Rajendra Engineering Enterprises v. Dy. CIT (2022) 98 ITR 32 (SN) (Raipur) (Trib)

S.147: Reassessment – After the expiry of four years - No failure to disclose material facts- Reassessment not valid - Accumulation of income — Claim that 15 Per Cent. of gross receipts should be allowed to be carried forward and up to 85 Per Cent. of gross receipts required to be applied in a year -Corpus donation - Excess application of preceding assessment year can be set off against current year's receipts. [S. 11, 148]

Held, that the assessment for the assessment years 2008-09 and 2009-10 had been originally completed under section 143(3) . At the time of completion of the original assessment, the assessee had furnished all the details and there was no failure on the part of the assessee to disclose all material facts fully and truly for the purpose of assessment. Even in the reasons recorded for reassessment, there was no allegation by the Assessing Officer that the assessee had failed to disclose all material facts fully and truly. Reassessment order was quashed . Held, that the Assessing Officer was to consider the contribution as corpus donations. Excess application of preceding assessment year can be set off against current year's receipts. (AY.2008-09 to 2010-11, 2013-14)

Jubilee Mission Hospital v. Dy. CIT (2022)100 ITR 221 (Cochin) (Trib)

S.147: Reassessment – After the expiry of four years – No failure to disclose material facts – Reassessment order is invalid . [S. 148]

The Tribunal held that the reopening of the assessment under section 147 without any reference to failure on the part of the assessee to disclose all facts regarding the items in the return of income or books of account during the assessment proceeding, was in violation of the proviso to section 147 of the Act and invalid. (AY .2011-12 to 2013-14)

ACIT v. West Bengal Agro Industries Corporation Ltd. (2022)97 ITR 33 (SN) (Kol) (Trib)

S.147: Reassessment – After the expiry of four years - Non-Resident — Presumptive Tax - No failure to disclose fully and truly all material facts- - Reassessment is not valid . [S. 44BB , 143(3), 148]

The Tribunal held that in the original assessment, the Assessing Officer had dealt with the provisions of section 44BB of the Act with regard to the income from services performed in India at 10 per cent. and income on the sale of spares carried outside India at 1 per cent. of the deemed profit. The Revenue authorities had duly referred to the instruction of the CBDT with regard to taxing under deemed provisions. All the facts had been disclosed before the Revenue authorities and had been duly considered during the original assessment proceedings. The assessee had disclosed the quantum of services performed and also the quantum of sale of spares. The business affairs within India and outside India had been duly disclosed before the Revenue authorities. Thus, there was no failure on the part of the assessee to file its return, and the assessee had disclosed fully and truly all material facts necessary for its assessment. The facts had been duly disclosed in the profit and loss account.

Hence, keeping in view the proviso to section 147, the reassessment proceedings initiated under section 147 of the Act beyond a period of four years were bad in law and had to be quashed. (AY. 2004-05)

G and T Resources (Europe) Ltd. v. Add. DIT (IT) (2022)96 ITR 6 (SN) (Dehradun)(Trib)

S.147: Reassessment – After the expiry of four years – Accommodation entries – Information from DDI (Inv) – No failure to disclose material facts [S. 68 ,143(3) 148]
Tribunal held that during the course of assessment proceeding, the issue of raising loans has been examined at length by the AO by specifically calling upon the assessee to provide/furnish the details of the loans and advances raised during the year which was duly complied with by the assessee by filing all the details/evidences and the AO, only after examining them, accepted the plea of the assessee as regards the loans raised and accordingly framed the assessment u/s 143(3) accepting all those transactions. Besides the assessee has made full disclosure of these transactions in the books of account which have been examined at length by the AO during the course of original assessment proceeding. Therefore, the reopening of assessment u/s 147 in the present case, without any reference to failure on the part of the assessee to disclose all facts regarding the said loans in the return of income books of account and also during the assessment proceeding, is not justified and is in violation to proviso to section 147. Reassessment order was quashed . (AY. 2011 -12)
Dy.CIT v. Pacharia Exports P. Ltd (2022) 95 ITR 13 (SN) (Kol)(Trib)

S.147: Reassessment – After the expiry of four years – Cash credits – No failure to disclose material facts – Reassessment is invalid [S. 68, 148]
Held that the reopening of assessment under section 147 after a period of more than four years on the ground that sources of loan funds were not explained, without any reference to failure on the part of the assessee to disclose all facts regarding the loans in the return of income, books of account and during the assessment proceedings, was in violation to proviso to section 147 of the Act and invalid.(AY.2011-12)

Dy. CIT v. Pacharia Exports Pvt. Ltd. (2022)95 ITR 13 (Kol) (Trib)

S.147: Reassessment-After the expiry of four years-details of inter-unit transfer provided during assessment proceedings-Full and true disclosure-No tangible material-Reopening invalid [S.10AA, 148]
The assessee submitted the details for claiming deduction under section 10AA, and the AO passed the assessment order under section 143(3), recording the plant's existence and considering the assessee company's turnover along with the net profit ratio. Subsequently, notice under section 148 was issued beyond four years. The reasons restricted the deduction under 10AA in the proportion of material purchased from outside parties other than inter-unit transfer.
The Tribunal, while quashing the reopening, noted that the reopening is based on the information submitted during assessment proceedings. It was not the case that the inter-unit transfer of the goods and services did not correspond to the market rate. The AO must show failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment for that year. During the assessment proceedings, the AO obtained complete

details and recorded the turnover and the net profit ratio in the assessment order. There was no failure to disclose fully and truly all material facts by the assessee, and the AO has no tangible material. Hence, the reassessment proceedings are invalid. (AY. 2010-11)
Advanced Enzyme Technologies Ltd. v. ACIT (2022) 216 TTJ 645 / 212 DTR 190 (Mum) (Trib.)

S.147: Reassessment-After the expiry of four years-Share premium-Information obtained during subsequent year assessment proceedings-No tangible material-No reopening on suspicion-Reassessment not valid [S. 68, 148, 151]
During the assessment proceedings for 2012-13, the Assessing Officer wanted to enquire about the share premium shown in the books of accounts. However, the assessee replied that no share premium was received during the assessment year under consideration, and the same was issued in the earlier assessment years 2009-10. Accordingly, the AO issued a notice under section 148 of the Act that the share premium received by the assessee has escaped assessment.
The Tribunal noted that the Assessing Officer had no reliable information or tangible material to form the belief that the assessee's income for the year under consideration has escaped assessment, as the same was bogus or was not genuine. Mere information given in the subsequent years for issuance of shares at a premium will not constitute any tangible material (information) and cannot be said to be a reason to form the belief that the assessee's income has escaped assessment. In this case, the Assessing Officer has made a wild suspicion regarding the escapement of income without any information in his hand regarding escapement of income. The suspicion of the Assessing Officer was not based on any reliable information or tangible material coming to his possession in this respect. There is no dispute to the well-settled proposition of law that reason to believe must have a material bearing on the question of escapement of income. It does not mean a purely subjective satisfaction of the assessing authority; such reason should be held in good faith and cannot merely be a pretence.(AY. 2009-10)
Alankar Commodeal (P) Ltd. v. ITO (2022) 216 TTJ 445/ 213 DTR 161 (Kol) (Trib.)

S.147: Reassessment-After the expiry of four years-Search and Seizure-General information from Investigation wing-No failure to disclose material facts-Re assessment not valid [S. 148]
Held that merely on the basis of General information from Investigation wing reassessment is not valid. There is no failure to disclose material facts. Reassessment was quashed.*(*AY. 2011-12)

Prakash Chand Kothari v. Dy. CIT (2022) 94 ITR 49 (Jaipur) (Trib)

S.147: Reassessment-After the expiry of four years-Change of opinion-Borrowed satisfaction of Investigation wing-Reassessment is bad in law.[S. 143(3) 148, 153A]
Held that reasons recorded for reopening the reassessment are to be examined on a standalone basis. Nothing can be added or deleted from the reasons so recorded. The reasons are required to be read as they were recorded by the Assessing Officer. No inference can be allowed to be drawn on the basis of reason not recorded by him. The reasons recorded should be self-explanatory and should not keep the assessee guessing for reasons. Reasons provide

link between conclusion and the evidence. On facts reassessment based on borrowed satisfaction of Investigation wing is held to be bad in law.(AY.2012-13)

ACIT v. Bhola Ram Papers and Powers Pvt. Ltd. (2022)93 ITR 419/ 209 DTR 231/ 215 TTJ 273 (Pat) (Trib)

S.147: Reassessment-After the expiry of four years--Depreciation-Granted on Bridge at rate applicable to building instead of rate applicable to plant and machinery-Reassessment valid-Direction of CIT(A) to allow amortization of expenditure incurred during tenure of agreement is justified.[S. 32(1)(ii), 37(1), 143(3) 148]

Held that it was an admitted fact that the Government had cancelled the build-operate-transfer agreement. There was a failure on the part of the assessee to disclose all the information before the Assessing Officer. Therefore, the reopening of assessment was valid and in accordance with law.The assessee was only a contractor and did not hold any right in the build-operate-transfer project except recovery of toll to recoup the expenditure incurred and therefore, the assessee could not be treated as the "owner" of the property and could not be allowed depreciation under section 32(1)(ii) of the Act. The Commissioner (Appeals) following the CBDT Circular No. 9 of 2014, dated April 23, 2014 ([2014 364 ITR (St.) 1) had directed the Assessing Officer to allow amortization of the expenditure incurred during the tenure of the agreement. No interference was called for in the order passed by the Commissioner (Appeals). Tribunal also held that when the build-operate-transfer project contract itself had been cancelled there existed no business there was no question of allowing any expenses. Therefore, the confirmation of disallowances of other expenses of Rs. 26,42,583 was proper.(AY.2003-04, 2004-05, 2005-06, 2008-09)

East Coast Consultants and Infrastructure Ltd. v. ACIT (2022)93 ITR 72 (SN)/ 213 DTR 16/ 216 TTJ 623 (Chennai)(Trib)

S.147: Reassessment-After the expiry of four years--Depreciation-Granted on Bridge at rate applicable to building instead of rate applicable to plant and machinery-Reassessment valid-Direction of CIT(A) to allow amortization of expenditure incurred during tenure of agreement is justified.[S. 32(1)(ii), 37(1), 143(3) 148]

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East Coast Consultants and Infrastructure Ltd. v. ACIT (2022)93 ITR 72 (SN)/ 213 DTR 16/ 216 TTJ 623 (Chennai)(Trib)

S. 147: Reassessment – Additions made for issues different from ground of reassessment- Additions not sustainable.[S. 148]
Held, if no addition was made in the reassessment order on the issue for which it was reopened, then any other addition could not be made. (AY. 2012-13).
Pushpa Singh v. PCIT (2022)98 ITR 79 (Pat) (Trib)

S. 147: Reassessment –Notice – Additions made on the ground different from reassessment grounds- Reassessment not sustainable. [S.148]
The Tribunal held that when the Assessing Officer had not made any addition on the issues for which the case of the assessee was reopened, he could not make any other addition without issuing fresh notice under section 148 after recording escapement of income and therefore, the entire reassessment proceedings were quashed.(AY. 2008 -09)
Jeet Singh v. ITO (2022)98 ITR 331 (Delhi) (Trib)

S. 147 : Reassessment - No addition was made on grounds on which notice is issued — Other additions do not survive- Reassessment was quashed . [S. 92C, 133A , 148]
Held that when no addition was made on grounds on which notice is issued, other additions do not survive. Reassessment was quashed . *(* AY. 2012-13, 2015-16)
Edelweiss Rural and Corporate Services Pvt. Ltd. v. CIT (2022) 98 ITR 69 (SN)(Mum) (Trib)

S. 147 : Reassessment – Information relating to cash deposit and purchase of property - Addition was made on account of expenditure - Reasons for initiation of reassessment proceedings ceased to survive — Reassessment is bad in law .[S. 37(1), 148]
Held that the reasons for reopening the assessment were cash deposit in the savings bank account and purchase of immovable property . However, the assessment had been completed making additions on account of disallowance of the claim of expenditure. When the reasons for initiation of reassessment proceedings ceased to survive, reassessment is bad in law. (AY. 2013-14)
Manish Mittal v. ITO (2022) 98 ITR 18 (SN)(Delhi) (Trib)

S. 147: Reassessment -Setting aside Tribunal's order by high court revives appeal from date of inception- Jurisdiction open to question as matter not final. [S. 144C]
Held, that once the High Court had set aside the earlier order of the Tribunal and confirmed the latter order, the appeal before the Tribunal revived and was to be treated as pending from the date of inception, that is, from the original date of filing of the appeal. The jurisdictional provision which was mandatory and enacted in public interest could never be waived and no question of finality of the Tribunal's remand order could arise because the mandatory conditions for finding jurisdiction for initiating reassessment proceedings had not been fulfilled. It was always open to question or challenge the jurisdiction of the proceedings as long as the matter had not reached finality. (AY. 2011-12)
YCH Logistics (India) Pvt. Ltd. v. Dy. CIT (2022)98 ITR 467 (Chennai)(Trib)

S. 147 : Reassessment –With in four years-Assessment year 2005-06 was the initial assessment year – Substantial expansion - No suppression of material – Reassessment is held to be bad in law [S.80IC ,143(3), 148]

Held that the AO had accepted the assessee's claim for deduction under s. 80IC @ 100 per cent on substantial expansion in the original assessment proceedings and he had no fresh material before him to establish that there was no suppression of any material information the part of the assessee. Deduction under s. 80-IC @ 100 per cent has been accepted by the Tribunal in the succeeding assessment year . Reassessment was bad in law . (AY.2012-13)

Valco Industries Ltd. v. ACIT (2022) 215 DTR 181 /218 TTJ 628 (Chd)(Trib)

S. 147 : Reassessment –With in four years-Subsequent decision of High Court – Reassessment is valid [S. 148]

AO completed the original assessment on 16th December 2011. Decision of the High Court of Delhi is dated 17th Sept., 2012 and the notice under S. 148 was issued on 13th March, 2014. Held that the decision of the High Court of Delhi was a source of information and basing on which the AO issued notice under S. 148 within the prescribed time-limit as provided within four years. Subsequent decision of High Court constituted a source of information and therefore, notice under s. 148 issued by the AO on the basis of said decision within the prescribed time-limit of four years is valid. Followed , Kartikeya International v. CIT (2011) 241 CTR 489 (All)(HC) , CIT v. Novapan India Ltd. (2000) 158 CTR 590 (AP) (HC) , Kumar Engineers v. CIT (1997) 137 CTR 597(P&H) (HC), CIT v. Raghunath Pr. Poddar (1974) 96 TTR 316 (Cal)(HC) ITO v. Saradbhai M. Lakhani (2000) 243 ITR 1 (SC) . (AY.2009-10)

Dy. CIT v. Clarion Technologies (P) Ltd. (2022) 216 TTJ 23 (UO) (Pune)(Trib)

S. 147 : Reassessment - Best Judgment Assessment — Natural justice - Notice issued u/s 143(2) - Assessee was out of station — Not attended – Order was passed under section 144 - Matter remanded for re-adjudication. [S.50C, 143(2) ,144, 148]

Held, that the assessee did not get proper opportunity to explain his case before the authorities and since the Assessing Officer had completed the assessment under section 144 , the issue was restored to the file of the Assessing Officer for re-adjudication after affording due and reasonable opportunity of being heard to the assessee.(AY. 2009-10)

Gopi Kishan Pandey v .ITO (2022) 99 ITR 203 (Trib) (Lucknow)(Trib)

S. 147 : Reassessment - Not made any addition pertaining to three-folded reasons for reopening the assessment- Cash credits - Reassessment order is bad in law .[S. 68 , 148, 254(1)]

The Assessing Officer initiated reassessment proceedings against the assessee on account of the assessee’s time deposits, cash deposit in bank accounts and interest income, respectively, he ultimately made addition under section 68 on unexplained cash credits in the nature of unsecured loans/land advances . The Commissioner (Appeals) partly reversed the additions. On appeal by the Revenue the assessee moved an application as per Rule 27 of the Income-Tax (Appellate Tribunal) Rules, 1963, challenging that when the Assessing Officer not

making addition pertaining to reasons recorded for reopening assessment, other additions cannot be made . Tribunal admitted the Rule 27 application and held that when the Assessing Officer had not made any addition pertaining to his three-folded reasons for reopening the assessment. The reopening was not sustainable in law..(AY.2012-13)

ITO v. Hassab Realty Pvt. Ltd. (2022) 99 ITR 315 (Pune) (Trib)

S. 147 : Reassessment – Unsecured loans - Accommodation entries - In reasons recorded, name of assessee and person from whom bogus accommodation entry different — Name of party and Permanent Account Number in information received also different – Reassessment not valid – Addition as cash credit was deleted . [S. 68 , 133(6) , 148]

Allowing the appeal the Tribunal held that in reasons recorded, name of assessee and person from whom bogus accommodation entry are different, name of party and Permanent Account Number in information received also different . Reassessment order was not valid . Addition as cash credit was also deleted on merit . (AY.2011-12)

Golden Central Foods Products P. Ltd. v. ITO(2022)100 ITR 49 (SN)(Delhi) (Trib)

S.147 :Reassessment - No new material - Cash credits – Income from undisclosed source- Assessee borrowed money from friends and relatives- No evidence to show the receipts as bogus- Reassessment was quashed . [S.68, 148]
The Tribunal held that there was no new material and the Assessing Officer failed to bring any evidence on record to show that amounts borrowed were bogus and not for business. Reassessment was quashed . (AY. 2011-12)
Sanjit Jitendranath Biswas v. ITO (2022)97 ITR 14 (SN) (Surat) (Trib)

S. 147: Reassessment Notice –Failure to issue notice- Reassessment void- Issue of notice prior to filing return of no avail. [S. 143(2) 148, 292BB]
The Tribunal held that the Assessing Officer, before making the assessment, did not issue any notice under section 143(2) of the Act after the filing of the return by the assessee in response to notice under section 148. Non-fulfilment of this statutory jurisdictional requirement rendered the proceedings invalid and the order void. The earlier notice issued by the Assessing Officer under section 143(2) prior to the filing of the return by the assessee in response to notice under section 148, was of no avail. Further, section 292BB does not validate the case of non-issuance of notice under section 143(2) thus, assessment proceedings were null and void. (AY. 2010-11)

Bhupendra K. Pathak v. ITO (2022)97 ITR 28 (SN)/ 218 TTJ 11 / 216 DTR 283 (SMC) (Pune) (Trib)

S. 147: Reassessment- No new tangible material to reopen assessment- Reassessment quashed. [S. 148]
The Tribunal held that there was no new tangible material to reopen the assessment. The reassessment was rightly quashed by the Commissioner (Appeals). (AY. 2011-12)

Sanjit Jitendranath Biswas v. ITO (2022)97 ITR 14 (SN) (Surat) (Trib)

S. 147: Reassessment - Assessment reopened on certain specific grounds- No addition was made on which the reassessment notice was issued - Additions made on other grounds- Reassessment is bad in law . [S. 143(3)]

The Tribunal held that that the Assessing Officer not having made any addition on the ground on which the assessment was reopened and having made various other additions, the reassessment order passed by the Assessing Officer under section 143(3) read with section 147 of the Act was bad in law and was to be quashed. (AY. 2010-11)

Satyawan v. ITO (2022)97 ITR 16 (SN) (Delhi) (Trib)

S. 147: Reassessment –With in four years- No failure of disclosure of facts - Reassessment order is bad in law . [S. 148]

No allegation of failure on the part of the assessee to disclose all the material facts for completion of assessment. The Assessing Officer had not satisfied the twin conditions needed under section 147 for reassessment. The reassessment order held to be bad in law . (AY.2010-11)

ACIT v. Abir Infrastructure Pvt. Ltd. (2022)97 ITR 245 (Hyd.) (Trib)

S. 147 : Reassessment- Change of opinion - Industrial undertakings – Sale of surplus power – Reassessment is not valid [S.80IA(4)(iv)]

Tribunal held that the power plant was established in a separate building and had its own separate and independent machinery, that the view of the Assessing Officer was glaringly contrary to the admitted facts available on record and within his knowledge and thus the reassessment proceedings were embarked upon on a mere "change of opinion" . Order of CIT(A) is affirmed . (AY. 2010-11, 2011-12)

Dy. CIT v. Sunflag Iron And Steel Co. Ltd. (2022) 96 ITR 9 (SN.) (Nag) (Trib)

S. 147: Reassessment –Finding of Commissioner (Appeals) recorded in perfunctory manner — Order not sustainable — Matter restored to Commissioner (Appeals) for adjudication de novo on merits. [S. 148]

The Tribunal held that the Commissioner (Appeals) jumped to the conclusion that the reopening was made based on the same information which was available to the Assessing Officer at the time of original assessment proceedings without discussing how the facts of the case fit into the ratio of the judicial precedents discussed by him. Nor had he discussed what information was available with the Assessing Officer at the time of original assessment proceedings and what information came to the knowledge of the Assessing Officer, enabling him to form an opinion that the income escaped assessment to tax.Since the findings of the Commissioner (Appeals) holding that the reopening was not valid had been reversed, the matter was to be remitted to the Commissioner (Appeals) for adjudication de novo.(AY. 2008-09)

Electronica Machine Tools Ltd. v. Dy. CIT (2022)96 ITR 20 (SN) (Pune) (Trib)

S. 147: Reassessment — Reasons- —Additional ground – Jurisdiction - Addition made in reassessment proceedings with regard to head for which there was no notice — Reassessment is bad in law .[S. 148]

The Tribunal held that as regards the addition of Rs. 2,25,41,809 there was no notice to the assessee and the assessee was only made to explain the expenditure of Rs. 4,07,99,236 on account of loss on sale of repossessed assets and excess deduction. With regard to additions made on account of interest on inter-corporate deposits, there was no actual show-cause notice. In the original assessment the question of claim of loss of Rs. 2,95,61,000 on sale of vehicles repossessed by the assessee-company from defaulter parties was considered as manifested by the letter of the assessee addressed to the Assessing Officer. On the one hand, the reasons cited in the notice under section 148 of the Act were erroneous with regard to calling for reassessment in regard to a factor which was already examined in the original assessment. On the other hand, in the assessment order, an addition was made in regard to a head for which actually there was no notice to show cause issued. Thus, the Assessing Officer was in error in invoking jurisdiction under section 147 of the Act. Since the jurisdictional grounds raised by the assessee had been allowed making the reassessment illegal, the other grounds raised did not require consideration. (AY. 2006-07)

Escorts Finance Ltd. v. Dy. CIT (2022)96 ITR 45 (SN)(Delhi)(Trib)

S. 147: Reassessment - Perquisite —Transfer of shares at face value - Section not existing in statute —Non application of mind – Reassessment is bad in law. [S. 2(24)(Iv), 148]

The cost of shares of E for SGS was Rs. 10 per share and the shares had been transferred by SGS to the assessees at the same price, i. e., Rs. 10 per share. Therefore, no taxable perquisite arose. The reasons recorded by the Assessing Officer clearly showed that he had nowhere recorded his satisfaction with regard to the correctness of the findings of the Commissioner (Appeals) nor had he recorded his finding as to how he had reached the conclusion that income in the hands of the assessees had escaped assessment. The observations made by the Commissioner (Appeals) in case of SGS were not binding upon the Assessing Officer. (AY.2005-06)

J. S. Gujral Ranjeet Singh v. Dy. CIT (2022)95 ITR 246 (Delhi)(Trib)

Ranjeet Singh v. Dy. CIT (2022)95 ITR 246 (Delhi)(Trib)
Krishna Kumar Pant v. Dy. CIT (2022)95 ITR 246 (Delhi)(Trib)
Sanjee Narayan v. Dy. CIT (2022)95 ITR 246 (Delhi)(Trib)

S.147 : Reassessment - Jurisdiction — Notice issued by Assessing Officer not having jurisdiction — Order passed by jurisdictional officer- Reassessment is void ab initio. [S. 120, 124 , 127 , 148]

Held that the jurisdictional Assessing Officer of the assessee-trust was the Assistant Commissioner (E), Mumbai and jurisdiction had never been changed or transferred to the ITO, Bareli, the very initiation of reopening by the ITO, Bareli under section 147 / 148 of the Act was bad in law. Under sections 120 and 124 of the Act only the Assistant Commissioner (E), Mumbai was the Assessing Officer of the assessee-trust empowered to frame the assessment, which had never been changed or transferred to ITO, Bareli under section 127 of the Act. The notice under section 148 of the Act having been issued by a non-jurisdictional Assessing Officer, the ITO, Bareli, the reassessment framed by the Assistant Commissioner (E), Mumbai on the basis of initiation of reopening under section 147 / 148 of the Act was not sustainable in the eyes of law for lack of jurisdiction being void ab initio.(AY.2007-08)

Executive Board of The Methodist Church In India v .ACIT (E) (2022)95 ITR 30 (SN)(Mum) (Trib)

S. 147:Reassessment —Tangible material -Reasons Communicated to Assessee bearing signature of Assessing Officer and approved by CIT(E)- Sanction of Commissioner -Reassessment notice is valid- Jurisdiction - Merely because assessee had surrendered registration jurisdiction of Assessing Officer of exemption circle would not automatically change -Jurisdiction not choice of assessee — Reassessment notice issued by Officer of Exemption circle valid - Registration under section 12AA had been cancelled with retrospective effect, the challenge to the denial of exemption under section 11 was untenable - Levy of interest under section 234B of the Act was consequential and accordingly, to be dismissed [S. 11, 12, 12A 12AA, 120 , 148, 151 234B]

Held that merely because the assessee had filed a letter on March 21, 2016 surrendering its registration under section 12A or giving up its benefit of section 11 , that did not mean that from the date of the letter, the jurisdiction of the Assessing Officer automatically got changed. At the time of issuance of notice under section 148 , the Assistant Commissioner (E) had valid jurisdiction not only to initiate the proceedings under section 148 but also to pass the assessment order .The contention that, since the assessee had challenged the jurisdiction, it was incumbent upon the Assessing Officer to refer it to the higher authorities in terms of section 124(4) was not tenable because the jurisdiction over the assessee lay with the Assessing Officer, Exemption Circle by virtue of provisions contained under section 120 of the Act. This was a case of jurisdiction assumed by granting registration by the Income-tax Department on the application filed by the assessee which fell within the definition of "class of assessee and class of cases" as defined under clauses (c) and (d) of sub-section (3) of section 120 . The assessee ostensibly fell into a specific category of cases and it was not open to the assessee on its own to remove itself from a specific category of cases and then contend that it should have been assessed by a different Assessing Officer. The matter of jurisdiction is not by the choice of the assessee albeit it depends upon the specific provisions contained in sections 120 and 124 . That there was sufficient material to hold that the Assessing Officer had prima facie reasons to believe that income had escaped assessment, especially, the manner in which the assessee had taken over the properties of AJL, how the AICC, AJL and the assessee had common control or management, and how the assessee had got benefit by getting the entire shareholding and underlying assets of AJL by merely paying a paltry sum of Rs. 50 lakhs. This itself showed strong prima facie reasons for any prudent person to believe that there was definitely escapement of income. It was not a case of the Assessing

Officer seeking to make a roving and fishing enquiry without any basis or material on record. The Assessing Officer had duly applied his mind after incorporating various material and information coming on record and after independently examining them, had recorded the reasons. There was no infirmity or illegality either in the recording of the reasons or assuming jurisdiction or reopening the case under section 147 or issuance of notice under section 148 . That since registration under section 12AA had been cancelled with retrospective effect, the challenge to the denial of exemption under section 11 was untenable . That the challenge to the levy of interest under section 234B of the Act was consequential and accordingly, to be dismissed.(AY.2011-12)

Young Indian v. ACIT (E) (2022)95 ITR 33 (SN)/ 218 TTJ 1 (Delhi)(Trib)

S. 147 : Reassessment – Communication of reason to believe – No violation of directions of Supreme Court in GKN Driveshaft (India.) Ltd.'s case- Reassessment is valid [S. 148]

The Tribunal dismissing the assessee's appeal held that communication of reasons to the assessee where the assessee seeks reasons for the issuance of notice, the AO is bound to the supply the reasons within a reasonable time. In the instant case, after filing the return of income, the assessee never sought reasons for initiating proceedings under s. 147 during the course of assessment proceedings and participated in such proceedings. Thus, the assessee cannot be take the plea that reasons were not supplied to him or the reasons have not been supplied within a reasonable period of time taking support from the directions of the Supreme Court in the case of GKN Driveshafts (India) Ltd. vs ITO (2003) 179 CTR (SC) 11 : (2003) 259 ITR 19 (SC). After calling for the remand report from the AO, the CIT(A) has recorded a specific finding to the effect that reasons were duly communicated to the assessee during the course assessment proceedings which is duly acknowledged by the assessee on the note sheet. Therefore, there is no violation on the part of the AO in terms directions laid down by the Supreme Court as well as in terms of principle of natural justice. Hence, contention of assessee that AO has not supplied copy of reasons cannot be accepted.(AY. 2008 -09)

Rajesh Chunara v. ITO(E) (2022) 219 TTJ 965 (Jaipur)(Trib)

S. 147 : Reassessment - Penny stock – Report of investigation wing - Reasons recorded were generic and based on borrowed satisfaction of investigation wing – No live nexus between tangible material and reason recorded – Reopening was based on mere suspicion –Reassessment is bad in law [S. 10(38), 45, 68 , 148]

Assessment was reopened pursuant to reasons recorded alleging that as per the information received from Kolkata investigation wing based on search/survey action; wherein it was alleged that share price of large number of penny stock companies were artificially manipulated so as to book bogus Long Term Capital Gains. Assessee had disclosed Long Term Capital Gains of Rs. 20.76 lakhs from sale of scrip named Global Securities Limited. Accordingly the assessment was reopened to examine suspicions transaction in penny stock. The Assessee did not raise any legal ground challenging the re-assessment before the AO or before the CIT(A). Hon'ble ITAT held that legal ground can be raised by Assessee at any stage as held by Hon'ble Supreme Court in the case of National Thermal Power Co. Ltd v. CIT (1998), 229 ITR 383(SC).After perusal of the reasons recorded it was observed by the Hon'ble ITAT that the reasons recorded were generic in nature without and the information sated therein did not say that Assessee's income had escaped assessment. It was nowhere emanating from the reasons recorded the statement recorded during the search mentioned about Assessee's involvement. In the reasons recorded the AO merely used general information from the investigation report; such information cannot suggest escapement of taxable income of the Assessee. The reason to believe cannot be mere suspicion, gossip or

rumour. It was held that reopening was based on borrowed satisfaction without any independent opinion framed by the AO. Accordingly, the re-assessment was held as bad in law. (AY. 2013 -14 , 2014 -15)
NishantKantilal Patel v. ITO (2022) 217 TTJ 895 / 214 DTR 209 (Surat)(Trib)

S.147: Reassessment - Bogus purchase – Reopening based on investigation of CBI held valid -Non-filer and did not provide for details to substantiate the transactions- . Addition to the extent of 12.50% was held to be justifiable. [S. 68, 69C, 148 , 143(3)]
Assessee did not filed its return of income and the case was reopened on the basis of information from investigation made by the CBI. The AO had disallowed entire purchases and also had made receipts reflecting in bank account and outstanding dues of loans/creditors. The CIT(A), inter-alia restricted the addition on account of alleged bogus purchase to 12.50%.Assessee had, inter-alia, challenged the reopening and had also disputed the addition of 12.5% as sustained by the CIT(A). Hon'ble ITAT observed that Assesse was non-filer, the books of accounts were not maintained, the Assessee failed to file even basis details before the AO. AT the time of issuance of notice for reassessment; adequacy of the reasons recorded is not required to be tested. Investigation made by the CBI was tangible material. Considering these facts persisting in the case; the re-assessment based on investigation made by CBI was held valid.
In regards to addition of 12.50% of bogus purchase; the Hon'ble Tribunal observed that it was a case where circular trading was entered by Assessee with related parties. The sales and purchase were not reliable as the goods were sold without movement of goods. The transaction were settled through journal entries. Accordingly, it was held that addition of 12.50% of the bogus purchases as sustained by the CIT(A) was justifiable. (AY. 2009 -10)
Opel Paper Mills Ltd. v. DCIT (2022) 219 TTJ 121 / 217 DTR 1(Mum)(Trib)

S. 147 : Reassessment-Capital gains-Investment in prohibited mode-No new tangible material-Reassessment is bad in law [S. 11, 13(1)(d), 143(1)]
Assessee-charitable trust filed return which was processed under section 143(1). Assessing Officer reopened the assessment on grounds that assessee made investment in prohibited mode of investment as per section 13(1)(d) from capital gains earned on sale of quoted shares and assessee showed deficit after claiming exemption under section 11(1)(a) when same was required to be restricted to nil. Held that reassessment proceedings were initiated after perusal of original return and other annexures filed along with it. Since initiation of reassessment proceedings by Assessing Officer was without any new or tangible material which came into his possession subsequent to intimation under section 143(1), mere non-selection of assessee's case for scrutiny would not reduce significance of reasons to believe. Reassessment order was quashed.(AY. 2010-11)
Navajbai Ratan Tata Trust. v. ACIT *(*2022) 196 ITD 189 (Mum) (Trib.)

S. 147 : Reassessment-Income deemed to accrue or arise in India-Permanent Establishment-Notice based on the assessment orders of earlier years orders is held to be not valid [S. 9(1)(i) 148]
Held that reassessment notice merely based on assessment orders of preceding years and assessee's submission in succeeding year and there was not even a whisper of facts pertaining to assessment years under consideration. Reassessment notice is quashed. (AY. 2008-09 to 2011-12)

Bentley Nevada Inc. v. DCIT (IT) (2022) 194 ITD 10/ 94 ITR 503 (Delhi) (Trib.)

S.147: Reassessment-Capital gains-Full value of consideration-Stamp valuation-Agreement to sale-Registration-No failure to disclose material facts-Capital gains offered in the Assessment year 2004-05-Reassessment is not valid [S.(47), 45, 48, 148, Transfer of Property Act 1882, S.53A]

Agreement to sell was entered in AY. 2004-05 along with parting of possession and full value of consideration too was received. Assessee offered the Capital gains in AY. 2004-05. The Registration was done in subsequent year, AO reopened the assessment for AY. 2005-06 and invoked provisions of S. 50C, and made addition of difference between the sale consideration and FMV as determined by stamp duty valuation of the year of registration. On appeal the Tribunal held that 50C has no applicability in AY. 2005-06, and there was no failure on part of assessee in disclosing the facts, which can warrant the re-opening as well as additions by applying 50C in AY 2005-06. (AY. 2005-2006)

Standard Chartered Bank.v. DCIT (IT) (2022) 216 TTJ 132 / 211 DTR 129 (Mum)(Trib.)

S. 147 : Reassessment –Business connection-No new tangible material-Reassessment is bad in law [S. 9(1)(i)),, 148]

Held that there needs to be close nexus between the material before the AO and the belief which he has formed. Since for the assessment years under challenge, no new tangible material has been brought by the AO to justify the reopening, the notice issued under section 148 is liable to be quashed and so also, the orders consequent to such notice. (AY. 2008-09 to 2011-12)

Bentley Nevada Inc. v. DCIT (2022) 194 ITD 10/ 94 ITR 503 (Delhi) (Trib)

S. 147 : Reassessment-Rectification proceedings initiated but not rectified-Reassessment proceedings initiated for same reasons-Held to be not valid [S. 148, 154]

Held that once rectification proceedings had been initiated, then for identical reasons reassessment proceedings could not be initiated unless the rectification proceedings culminated into an order, duly framed according to the provisions of law. There was no evidence brought on record by the Revenue that the proceedings initiated under section 154 of the Act had concluded or communication to that effect had been sent to the assessee. Since the proceedings had not been completed on record, it could not be said that income had escaped assessment. Reassessment notice was quashed.(AY. 2014-15)

Morgan Ventures v. Dy. CIT (2022) 94 ITR 15 (Delhi)(Trib)

S. 147 : Reassessment-Accommodation entries-Information from Investigation Wing-Borrowed satisfaction-Reassessment is not valid-Judicial discipline-CIT(A) is bound to follow the order of Jurisdictional Tribunal-Share capital-Letter of confirmation was filed-Addition as cash credits is not justified.[S. 68, 148, 254(1)]

Held that the reasons recorded clearly stated that they were recorded merely on the basis of the information received by the Assessing Officer from the Director of Income-tax (Investigation) relating to the accommodation entries. The Assessing Officer had not

recorded any other information as to the extent of income which had escaped from the assessment for the AY. 2009-10 in the case of the assessee by these accommodation entries. The Assessing Officer simply repeated the information that he had received from the Director of Income-tax (Investigation). The reopening of the assessment was bad in law, since the Assessing Officer had not applied his mind but had reproduced information received from the Director of Income-tax (Investigation) which was nothing but "borrowed information". Therefore, reopening of the assessment itself being bad in law, the entire re-assessment was liable to be quashed. Tribunal also held that the Commissioner (Appeals) had not followed the jurisdictional Tribunal's decision which is not in accordance with judicial discipline. As regards share application money the assessee has explained properly hence the addition is not valid.(AY. 2009-10)

Kalyan Jewells P. Ltd. v. ITO (2022) 94 ITR 42 (SN)(Ahd)(Trib)

S.147:Reassessment-Failure to dispose objections by passing separate order-Reassessment not valid-Tax effect less than 20lakhs-Appeal of revenue dismissed.[S. 143(3), 148]

Held, that the assessee had filed objections to the reopening which had not been disposed of by the Assessing Officer by way of a separate order before framing the assessment. The assessment order was quashed. Tribunal also held, that the tax effect in the Revenue's appeals was below Rs. 20 lakhs. Therefore, the appeals were to be dismissed as not maintainable in terms of Central Board of Direct Taxes Circular No. 3 of 2018, dated July 11, 2018 (2018)) 405 ITR (St.) 29).*(*AY.2001-02, 2003-04, 2004-05)

ITO v. Allied Instruments Pvt. Ltd. (2022)93 ITR 555 (Mum) (Trib)

S. 147 : Reassessment-Cash credits-Assessing Officer accepting objections and not assessing income which was basis of notice-Not entitled to assess income under some other issue independently. [S. 68, 148]

Dismissing the appeal of the Revenue the Tribunal held that the entire assessment order was silent with regard to the query relating to the unsecured loans and the computation of income was devoid of any addition which was basis for the Assessing Officer to believe that income had escaped assessment, that is, Rs. 88 lakhs. If the Assessing Officer had accepted the objections of the assessee, and had not assessed or reassessed the income, which was the basis of the notice, it would not be open to him to assess income under some other issue independently. The Assessing Officer's reliance upon Explanation 3 to section 147 of the Act was misplaced.(AY.2007-08)

ITO v. Sunlight Tour and Travels Pvt. Ltd. (2022)93 ITR 538 (Delhi)(Trib)

S. 147: Reassessment-Search and seizure-Share application money-Assessment third person-Opportunity to cross-examine alleged entry providers not provided-Reopening solely on unverified, unrectified, unsubstantiated and unconfirmed statements of third parties-Not valid.[S. 131(1)(d), 132(4), 148, 153C]

Held that opportunity to cross-examine alleged entry providers not provided. Reopening solely on unverified, unrectified, unsubstantiated and unconfirmed statements of third parties. Not valid.(AY.2014-15)

Vijayshree Food Products P. Ltd. v. ACIT (2022)93 ITR 206 (Delhi) (Trib)

S. 147: Reassessment-Accommodation entries –Information from Investigation wing-Name of assessee was not appearing in statement-Reopening is bad in law.[S. 148

Held that nowhere in the reasons recorded the assessee's name specifically mentioned. The Assessing Officer could not and should not straightaway issue notice under section 148 of the Act and assume jurisdiction to reopen the assessment on receipt of the information that a company run by A had transactions with assessee. Reassessment was quashed.(AY.2014-15)

Dy. CIT v. Coal Sale Co. Ltd. (2022)93 ITR 1 (SN) (Kol) (Trib)

S. 147 : Reassessment-Alleged non conduct of Audit-Reassessment notice is not valid.[S 44AB, 80IB(11A), 133(6)), 148]

.In the return of income the assessee claimed deduction under section 80IB (11A) on whole warehouse income. The Assessing Officer issued notice u/s 148 on the ground that the assessee had stated in its return of income that it was not liable to get its account audited under section 44AB of the Act.On appeal the Tribunal held there was no reason to believe non-conduct of audit under section 80-IB of the Act. Tribunal also held that where Assessing Officer wanted to clear his doubts in matter, he ought to have inquired with assessee under section 133(6) of the Act. Reassessment notice was quashed. (AY. 2008-09)

Bindra Warehousing Corporation. v. ITO (2022) 192 ITD 15 (SMC) (Jabalpur) (Trib.)

S. 148 : Reassessment –Notice-Reasons recorded after issue of notice-Order of High Court setting aside of reassessment proceedings is held to be proper. [S. 147, 292B, Art, 136]

High Court dismissed the Department's appeal from the order of the Tribunal, holding that on the facts it had been found that no reasons were recorded by the Assessing Officer in support of the reopening notice dated March 6, 2009, was not a case of clerical error, but where a substantial condition for a valid reopening notice, viz., recording of reasons to form a reasonable belief, was not satisfied, and that therefore, section 292B of the Act, would have no application. On a petition for special leave to appeal dismissing the petition the Court held that the reasons to reopen the assessment were recorded after issuance of the reassessment notice and, therefore, it could be seen that at the time when the notice for assessment was

issued, there was no subjective satisfaction. The High Court had not committed any error in setting aside the reassessment proceedings. (AY.2004-05)

PCIT v. Tata Sons Ltd. (2022)449 ITR 166/ 218 DTR 529/329 CTR 230 (SC)
Editorial: CIT v. Tata Sons Ltd (2019) 267 Taman 13 (Bom)(HC), affirmed.

S. 148: Reassessment-Notice-Liberty to assessee to file return under protest within one month without prejudice to his rights and contentions and seek reasons recorded-Order of High Court is affirmed with direction. [S. 147, Art, 226]

Against an order of the High Court dismissing the assessee's writ petition against notice under section 148 of the Income-tax Act, 1961, but directing the Department to provide the assessee a copy of the reasons based on which notice under section 148 was issued, the assessee filed a petition for special leave to appeal to the Supreme Court. Dismissing the petition the Court held that the order of the High Court was a non-speaking and cryptic order, did not issue notice on the special leave petition but left it open to the assessee to file a return of income under protest within one month, without prejudice to its rights and contentions, and ask for the reasons for issue of notice under section 147 of the Act. The court directed that procedure as prescribed in GKN Driveshafts (India) Ltd. v. ITO (2003) 259 ITR 19 (SC) would be followed by the Assessing Officer. In the case of an adverse order, it would be open to the assessee to challenge it.

Nusli N. Wadia v.ACIT (2022)447 ITR 376/ 289 Taxman 80 (SC)
Editorial : Nusli N. Wadia v.ACIT (2022) 447 ITR 363 (Bom)(HC), affirmed with direction

S. 148 : Reassessment –Notice-Challenged on several grounds-Dismissing the writ petition without discussing on any ground without stating the reasons for refusal to entertain writ petitions--Matter remanded to High Court for decision of Writ petitions afresh on merits.[S. 147, Art, 226]

The Assessee filed writ petition against the issue of notice u/s 148 of the Act and a number of issues or grounds are raised in a writ petition.High Court dismissed the assessee's writ petitions challenging the reopening of assessments under section 148 of the Income-tax Act, 1961, on appeals, allowing the appeals, that the orders were cryptic, non-speaking and non-reasoned orders. The reopening of the assessment had been challenged on a number of grounds. None of the grounds raised in the writ petitions had been dealt with or considered by the High Court on the merits. There was no discussion at all on any of the grounds raised in the writ petitions. The court had dismissed the writ petitions in a casual manner and had not given reasons for its disinclination to entertain writ petitions. The High Court in exercise of powers under article 226 of the Constitution was required to have independently considered whether the question of reopening of the assessment could be raised in a writ petition and if so, whether or not it was justified. The orders were bereft of reasoning as diverse grounds were raised by the parties which ought to have been examined by the High Court in the first place and a clear finding was required to be recorded upon analysing the relevant documents. The matter was remanded to the High Court for deciding the writ petitions afresh on the merits, in the light of the observations of the court.

Vishal Ashwin Patel v. ACIT (2022)443 ITR 1 / 212 DTR 123/ 325 CTR 699 / 132 taxmann.com 372 (SC)
H.P. Diamond India (P) Ltd v. Dy.CIT (2022) 449 ITR 163 / 287 Taxman 559 // 218 DTR 215/ 328 CTR 871/ 114 CCH 196 (SC.)

Editorial: Reversed Vishal Ashwin Patel v. ACIT (WP Nos. 3209/2019, 3150/2019, 3208/2019 and 3137/2019 (Bom)(HC) dated January 11, 2022.
H.P. Diamond India (P) Ltd v. Dy.CIT (2022) 139 taxmann.com 515 (Bom)(HC)

S. 148: Reassessment-Notice-Notices issued by the Assessing Officers under section 148 shall be deemed to have been issued under Section 148A as substituted by the Finance Act, 2021 and to be treated as show cause notices in terms of Section 148A(b) of the Act-The Assessing Officers shall, within 30 days from 04-05-2022, provide the information and material relied upon so that the assessees can reply to the notices within two weeks thereafter-Decision to apply to all such notices quashed by High Courts throughout Country.[S. 148A(b), 149, 151, 151A, Art, 142]

Allowing the appeal of the revenue the Court held that the Notices under section 148 of the Income-tax Act, 1961 which were the subject matter of writ petitions before the various respective High Courts shall be deemed to have been issued under section 148A of the Act or treated to be show-cause notices in terms of section 148A(b).

The assessing officer within thirty days from the date of the Order should provide to the respective assessees information and material relied upon by Revenue.

Further held that, the requirement of conducting any enquiry, if required, with the prior approval of specified authority under section 148A(a) of the Act is dispensed with as a onetime measure and the assessing officers shall thereafter pass orders in terms of section 148A(d) of the Act in respect of each of the concerned assesses.

Also held that all defences which may be available to the assesses including those available under section 149 of the Act and all rights and contentions which may be available to the concerned assessees and Revenue under the Finance Act, 2021 and in law shall continue to be available. Decision to apply to all such notices quashed by High Courts throughout Country.

UOI v. Ashsih Agarwal(2022) 444 ITR 1/ 213 DTR 217/ 326 CTR 473/ 286 Taxman 183 (SC)
Editorial : Decisions of the Allahabad, Calcutta, Rajasthan, Delhi, Chattisgarh, Bombay and Madras High Court modified.Ashok Kumar Agarwal v.UOI (2021) 439 ITRR 1 (All)(HC),Bagaria Properties and Investment Pvt Ltd v.UOI (2021) 441 ITR 359 (Cal)(HC) Manoj Jain v.UOI (2021) 441 ITR 359 (Cal)(HC), Manoj Jain v. UOI (2021) 441 ITR 418 (Cal)(HC), BRIP Infra Pvt Ltd v.ITO (2022)440 ITR 300 (Raj)(HC), Sudesh Taneja v.ITO (2022) 442 ITR 289 (Raj)(HC), Mon Mohan Kholi v.ACIT (2022) 441 ITR 207 (Delhi)(HC), Palak Khatuja v.UOI(2021) 438 ITR 622 (Chhhatishgarh)(HC), Tata Comminications

Transformation Service Ltd v.ACIT (2022)) 443 ITR 49 (Bom)(HC), Vellore Institute of Technology v.CBDT (2022) 442 ITR 233 (Mad)(HC)

S.148: Reassessment –Notice-Dead person-Notice issued in the name of a dead person-Reassessment was invalid.[S. 144, 147, Art, 226]

Held that orders passed in the earlier proceedings u/s. 143(3) for AY 2015-16 clearly indicated that the Dy. CIT had been intimated regarding the death of the assessee. The assessment order was passed taking into account the fact that the assessee had expired. No notice was issued to the legal representative/s of the assessee before undertaking the re-assessment proceedings. Accordingly, the re-assessment and the assessment order passed against the dead assessee, is invalid and the same cannot be sustained in the eyes of law. (AY. 2015-16)

Late Shobha Mehta (Through Legal Heir Sh. Kanhaya Lal Mehta) v. ACIT (2022) 218 DTR 262 (Raj)(HC)

S. 148 : Reassessment –Notice-Dead person-Notice issued for commencement of assessment or re-assessment proceedings against dead person is null and void [S. 147, Art, 226]

Reopening notice was issued by the revenue in the name of dead person. The legal representative of assessee intimated to income tax officer that noticee assessee had died long back and said notice against him was without jurisdiction.However, the the Assessing Officer issued notice u/s 142(1) calling upon the petitioner to show cause as to why ex parte order under section 144 of the Act should not be passed. The petitioner once again addressed the letter to drop the proceedings. As the notice was not dropped the petitioner filed the writ petition. Allowing the petition the Court held that unless heirs and legal representatives of deceased assessee have participated in assessment or reassessment proceedings in jurisdiction of Assessing Officer, notice issued for commencement of assessment or reassessment proceedings against dead person is null and void. Followed Urmilaben Anirudhasinji Jadeja v. ITO (2020) 273 Taxman 481/ 420 ITR 226 (Guj)(HC) (AY. 2012-13)

Himadri Kandarp Mehta. v. ITO (2022) 289 Taxman 514 (Guj)(HC)

S. 148 : Reassessment –Notice –Dead person-Death of the assessee-Notice issued in the name of deceased-Assessment order and consequent notices are set aside. [S. 144B, 147, 221 (1), 271 (1)(b), Art, 226]

Allowing the petition the Court held that, since the notice under section 148 was issued against a dead person is null and void, all consequent proceedings and orders, including the assessment order passed under section 144 and all the subsequent notices issued were set aside.

Dharamraj v. ITO (2022) 441 ITR 462 (Delhi) (HC)

S.148:Reassessment-Notice-Dead person-Notice in the name of dead person-Objection to notice by Legal Representative-. Mistake in notice not curable-Notice not valid [S. 147, 159(2)(b),292B, Code of Civil Procedure, 1908, S. 2(11), Art, 226]

The Assessing Officer issued notice in the name of the deceased assessee to file the return. Legal Representative informed the Assessing Officer the death of the assessee and requested for drop the proceedings. The Assessing Officer issued the notice u/s 142 (1) of the Act again in the name of deceased assessee. The assessee filed writ petition to quash the notice u/s 148 and further proceedings. Allowing the petition the Court held that the petitioner had not surrendered to the jurisdiction of the Assessing Officer by submitting a return in response to the notices nor had the jurisdictional Assessing Officer issued notice upon the petitioner as legal representative representing the estate of the deceased assessee. The notice of reassessment was not valid.(AY. 2015-16)

Kanubhai Dhirubhai Patel v. ITO (2022) 444 ITR 405 (Guj)(HC)

S.148 : Reassessment-Notice-Merger-Notice issued to non-existing entity-Notice invalid-Notice could not be corrected u/s. 292B of the Act. [S. 147, 292B, Art. 226]

The notice u/s 148 was issued to non-existing entity. The assessee challenged the said notice by filing writ petition. Allowing the petition the Court held that notice issued to non-existing entity is bad in law which could not be corrected u/s. 292B of the Act. The notice issued was quashed. Order in Sky Light Hospitality LLP v ACIT (2005) 405 ITR 296 (Delhi)(HC), Sky Light Hospitality LLP v ACIT(2018) 92 taxmann.com 93 (SC) distinguished, followed PCIT v. Maruti Suzuki India Ltd (2019) 416 ITR 613 (SC). (WP (L) No. 14088/2021 dt 25-10-2021)

Implenia Services and Solutions Pvt. Ltd. v. Dy.CIT (Bom.)(HC) (UR)

S.148 : Reassessment –Notice-Merger-Amalgamation- Non-existing entity- Notice was sent to the original assessee despite various communications sent to department informing of the amalgamation and non-existence of the assessee-Notice issued to a non-existing entity is bad in law-Notice was quashed.[S. 147, Art, 226]

The petitioner filed the writ petition and contended that the notice of reassessment and assessment order is bad in law on the grounds that notice issued u/s 148 of the Act has been issued to a non-existing entity. Original assessee 'Solutions Integrated Marketing Services Private Limited' to whom notice has been issued under Section 148 of the said Act, amalgamated with petitioner TLG India Private Limited, pursuant to the scheme of amalgamation approved by the High Court of Bombay. The Petitioner brought to the notice of DCIT about the scheme of amalgamation being approved by the Court. Various other communications were also sent informing of the amalgamation. Despite all the communications, the petitioner received notice under Section 148 of the said Act in the name of 'Solutions Integrated Marketing Services Private Ltd.' which is a non-existing entity. The Court relied on the judgement of Alok Knit Exports Ltd v. DCIT (2021) 283 Taxman 221/ (2022) 446 ITR 748 (Bom)(HC)) said that notice issued to a non-existing entity is bad in law. Therefore, the impugned notice was quashed and set aside. Consequently, assessment order was also quashed and set aside. (WP No. 2001/2022 dt. 6-5-2022)

TLG India Private Ltd.(As successor to 'Solutions Integrated Marketing Services Private Ltd) v. NFAC (2022) 219 DTR 383/ (2023) 330 CTR 207 (Bom)(HC)

S. 148 : Reassessment –Notice-Merger- Non-existing entity- Succession to business otherwise than on death-Notice issued in the name of non-existent company-Notice is bad in law [S. 147, 170, 292B, Art, 226]

Allowing the petition the Court held that assessee-company was merged into another company, under an approved scheme cleared by NCLT, and thereby lost its existence, and order of merger was available to revenue. Accordingly the notice issued under section 148 in name of non-existent company was bad-in-law. Followed PCIT v. Maruti Suzuki India Ltd (2019)) 416 ITR 613 (SC) (AY 2012-13)

Vahanvati Consultants (P) Ltd v.. ACIT (2022) 448 ITR 258/ 138 taxmann.com 51 (Bom)(HC)

Editorial: SLP of Revenue disposed off granting liberty to pursue appropriate proceedings in accordance with law by way of a review before High Court, ACIT v. Vahanvati Consultants (P) Ltd. (2022) 287 Taxman 176/ 131 CCH 161 (SC)

S. 148 : Reassessment –Notice-Merger- Non-existing entity -Information about merger of company was intimated in original return of income filed-Notice issued in name of non-existing company-Reassessment notice was quashed [S. 147, Art, 226]

Assessee-company was merged with another company. Information about merger of company was intimated in original return of income filed for the assessment year 2015-16. The Assessing Officer issued notice under section 148 proposing to reassess income of assessee in name non existing company.On writ allowing the petition the notice issued in the name of non-existing company was quashed. (AY. 2015-16)

Neo Structo Construction (P.) Ltd. v. ACIT (2022) 289 Taxman 698/ (2023)451 ITR 510 ((Guj)(HC)

S. 148 : Reassessment –Notice-Limitation-Initial notice issued after period of six years stating wrong assessment Year-Corrigendum issued thereafter cannot cure a procedural irregularity-Order rejecting objections set aside [S. 147, 149, 292B Art, 226]

The notice under section 148 was dated March 31, 2017 issued on April 4, 2017 and was delivered on April 12, 2017. Thereafter by way of corrigendum dated April 11, 2017, a corrigendum was issued stating that the notice was issued for the assessment year 2010-11 and not 2015-16 as mentioned in the notice. The objections filed by the assessee were rejected. On a writ allowing the petition the Court held that by corrigendum, the authorities

could not cure a procedural irregularity as contemplated under section 292B but they had invoked the jurisdiction to reopen the assessment for the year 2010-11 only after issuance of the corrigendum dated April 11, 2017 which was clearly time barred. The assessee had been able to establish that though the first notice was dated March 31, 2017, it had been issued only on April 4, 2017 and was time barred. The notice, the corrigendum issued and the order rejecting the assessee's objections was set aside.(AY.2010-11) (SJ)

Infineon Technologies AG v. Dy. CIT (IT) (2022)449 ITR 513/ 217 DTR 393 / 329 CTR 240 (Karn)(HC)

S. 148:Reassessment-Notice-Limitation-Notice issued beyond six years from the end of the assessment year barred by limitation-Proceedings and demand notice was quashed. [S. 147, Art, 226]

Allowing the petition the Court held that notice dated March 31, 2021 under section 148 of the Income-tax Act, 1961 seeking to reopen the assessment for the assessment year 2013-14, being beyond the period of six years from the end of the relevant assessment year, was barred by limitation, and therefore, quashed. All proceedings consequential thereto including the assessment order and the consequential demand notice under section 156 were also quashed.(AY.2013-14)

Rubina Senapati v. NAFC (2022)449 ITR 333 (Orissa)(HC)

S. 148 : Reassessment –Limitation-Issue and service of notice-effect from 1-4-2021-Faceless Assessment-Despatch in accordance with Section 13 of Information Technology Act, 2000 essential-Uploading of notices on My Account on E-Filing Portal not valid transmission-Notices sent as attachment through E-Mail designated addresses bearing jurisdictional Assessing Officer's digital signature valid under section 282A of the Act-Ratio of UOI v. Ashish Agarwal (2022) 444 ITR 1 (SC) [S.147, 148A, 149, 151, 282, 282A, Information Technology Act, 2000, S. 13, Art, 226]

In a group of matters challenging the issue of notices under section 148 of the Act as it stood prior to its amendment on April 1, 2021, by the Finance Act, 2021 was challenged. Since there was a regime change with respect to law of limitation coming into effect from April 1, 2021, which curtailed the time limit for reopening of assessment from six years to three years, the Department with a view to avail of the limitation prescribed under the unamended section 149 of the Act of 1961, generated reassessment notices under section 148 of the Act of 1961 for the assessment years 2013-14, 2014-15, 2015-16, 2016-17 and 2017-18, all dated March 31, 2021. The notices were generated and sent for despatch through electronic mail by the jurisdictional Assessing Officer using the income tax business application software. The facts on record evidence that though the notices were generated by the jurisdictional Assessing Officer using the income tax business application software on March 31, 2021, the same were despatched through the income tax business application's e-mail system, using the income tax business application servers on or after April 1, 2021; and/or despatched by the jurisdictional Assessing Officer through normal post on or after April 1, 2021. In view of the admitted fact as regards the date of despatch being April 1, 2021, or thereafter, the Department has sought to contend that for the purpose of determining the date on which the notices were issued within the meaning of section 149 of the Act of 1961, the date of despatch by the income tax business application software system through e-mail or speed post was not relevant and it is only the date of generation of the notices on the income tax business application portal, which must be considered :

Considering the ratio in UOI v. Ashish Agarwal (2022) 444 ITR 1 (SC) the Court classified writs into the following categories : category A comprising writ petitions where the notice was dated March 31, 2021 or before but was digitally signed on or after April 1, 2021, and was sent and received on or after April 1, 2021; category B where notice was dated March 31, 2021 or before, was digitally not signed, but was sent and received on or after April 1, 2021; category C where notice was dated March 31, 2021 or before, was digitally signed on or before March 31, 2021, but was sent and received on or after April 1, 2021; category D where notice was dated March 31, 2021 or before, was digitally signed on or before March 31, 2021, but there was no service either by e-mail or by post or any other mode and the assessee came to know later on through the portal or receipt of subsequent notice under section 142(1); category E where notice was dated March 31, 2021 or before, was manually signed, there was no service by e-mail but was despatched through speed post on or after April 1, 2021.

Accordingly, the Court held, (i) that the notices falling under category A, which were digitally signed on or after April 1, 2021, were to bear the date on which the notices were digitally signed and not March 31, 2021. The notices were to be considered as show-cause notices under section 148A(b) of the Act

(ii) That the notices falling under category B which were sent through the registered e-mail ID of the respective jurisdictional Assessing Officers, though not digitally signed were valid.

(iii) That in the case of notices falling under category C which were digitally signed on March 31, 2021, the jurisdictional Assessing Officer was to verify and determine the date and time of despatch as recorded in the Income Tax Business Application portal in accordance with the law laid down in the judgment as the date of issuance.

(iv) That in the case of notices falling under category D which were only uploaded in the e-filing portal of the assessees without any real time alert, the jurisdictional Assessing Officer was to determine the date and time when the assessee viewed the notices in the e-filing portal, as recorded in the Income Tax Business Application portal and conclude such date as the date of issuance in accordance with the law laid down in the judgment. If such date of issuance was determined to be on or after April 1, 2021, the notices were to be construed as issued under section 148A(b) of the Act.

(v) That in the case of notices falling under category E which were manually despatched, the jurisdictional Assessing Officer was to determine in accordance with the law laid down in the judgment, the date and time when the notice was delivered to the post office for despatch and consider that date as the date of issuance. If the date and time of despatch recorded was on or after April 1, 2021, the notice was to be construed as show-cause notice under section 148A(b) in terms of the directions of the Supreme Court

(vi) That in the case of notices sent to unrelated e-mail addresses the jurisdictional Assessing Officer was to verify the date on which the notice was first viewed by the assessee on the e-filing portal and consider that date as the date of issuance. If such date of issuance was determined to be on or after April 1, 2021, the notices was to be construed as issued under section 148A(b) of the Act in terms of the judgment.(AY.2018-19)

Suman Jeet Agarwal v. ITO (2022)449 ITR 517 / 218 DTR 327/ (2023) 290 Taxman 493 (Delhi)(HC)

S.148: Reassessment-After the expiry of four years-Merger-Notice issued on non existing company-Amalgamation-Amalgamating entity ceases to exist upon the approved scheme of amalgamation and notice issued to non-existing company, is not curable defect under Section 292B of the Act.-Reassessment notice and order disposal of objection. was quashed. [S.139(1), 147, 292B, Art, 226]

The notice dt. 31-3-2021 under section 148 of the Act was issued on the company which was ceased to exist. The petitioner has filed the return filed earlier and also objections to the reopening and one of the objection was the entity was not in existence on 31-3-2021 and Scope had merged with petitioner by virtue of order dated 30-9-2019 passed by NCLT. Not with standing this the Revenue rejected the petitioner's plea by order dt 3-2-2022. The petitioner filed writ against the rejection order. Allowing the petition the Court held that, the basis on which jurisdiction was invoked was fundamentally at odds with the legal principle that the amalgamating entity ceases to exist upon the approved scheme of amalgamation and notice issued to non-existing company, is not curable defect under Section 292-B of the Act. Notice under which jurisdiction was assumed by the Assessing Officer was issued to the non-existing company which amounts to substantive illegality and not a procedural violation of the nature adverted to in Section 292-B of the Act. Accordingly the reassessment notice and order disposing the objection was quashed. Followed PCIT v. Maruti Suzuki India Ltd.(2019) 416 ITR 613 (SC), Alok Knit Exports Ltd v. Dy.CIT (2021) 283 Taxman 221 /(2022) 446 ITR 748 (Bom) (HC) (WP No. 6728 of 2022, dt. 29-4-22) (AY. 2013-2014)

Apar Corporation Pvt. Ltd. v. ACIT (Bom.)(HC) (UR)

S. 148 : Reassessment –Notice-Challenged on several grounds-writ petition dismissed.[S. 147, Art, 226]

The Assessee filed writ petition against the issue of notice u/s 148 of the Act and a number of issues or grounds are raised in a writ petition.High Court dismissed the assessee's writ petitions challenging the reopening of assessments under section 148 of the Income-tax Act, 1961,(WP Nos. 3209/2019, 3150/2019, 3208/2019 and 3137/2019 dated January 11, 2022**.)**

Vishal Ashwin Patel v. ACIT (Bom)(HC) (UR)
H.P. Diamond India (P) Ltd v. Dy.CIT (2022) 139 taxmann.com 515 (Bom)(HC)

Editorial: Order of High court set aside and directed to decide on merits,
Vishal Ashwin Patel v. ACIT (2022)443 ITR 1 / 212 DTR 123/ 325 CTR 699 / 132 taxmann.com 372 / 287 Taxman 167 (SC)
H.P. Diamond India (P) Ltd v. Dy.CIT (2022) 449 ITR 163 / 287 Taxman 559 / 114 CCH 196 (SC.)

S.148: Reassessment-Notice-Income above 20 Lakhs-ITO has no jurisdiction to issue notice-Notice should be issued by AC/DC as per CBDT instruction No.1/2011 [S. 147, 151, Art.226]

The petitioner had filed a Writ Petition challenging Notice issued under section 148 of the Act.According to Petitioner as per instruction No. 1/2011 dated 31st January, 2011 issued by the Central Board of Direct Taxes, where income declared/returned by any Non-Corporate assessee is up to Rs. 20 lakhs, then the jurisdiction will be of ITO. The Petitioner's income was above Rs. 20 lakhs. It was held that, the notice under section 148 of the Act is a jurisdictional notice and any inherent defect in the said notice is not curable and quashed the same. (AY 2012-13)

Ashok Devichand Jain v. UOI (2023) 452 ITR 43 / 151 taxmann.com 70 (Bom)(HC)

S.148: Reassessment –Notice-Reasons for reopening has blanks-notice not digitally signed-Petitioner has not filed its objections to the notice-Petitioner directed to file its objections within two weeks-The Assessing Officer shall grant a personal hearing and pass an assessment order [S.147,151, Art, 226]

The reassessment notice issued is not even digitally signed and the reasons for reopening has blanks. Therefore, the notice should not be even accepted as valid notice. On writ the Court found that petitioner has not filed its objections to the notice, though returns have been filed pursuant to the notice. Therefore, it directed the petitioner to file its objections within two weeks and the objections shall be heard and disposed within three weeks thereafter by the Assessing Officer. The court however, didn't make any observations on the merits of the case. (WP. No.3081 of 2022 dt. 17-3-2022)

Sai Enterprises v. UOI (Bom)(HC)(UR)

S.148: Reassessment –Notice-Recorded reasons not provided-Non-application of mind by the Assessing officer-There is no section 148D under the Income-tax Act-Notice and order quashed. [S. 147, 148D 151, Art, 226]

Petitioner filed its response to notice u/s 148 of the Act and brought to the notice of Assessing Officer that petitioner has not been provided with the reasons recorded for reopening of the assessment and a copy of sanction accorded under section151 of the Act. The Assessing Officer instead of responding, issued a show cause notice. Petitioner received order under section 148D of the Act. On writ allowing the petition the Court held that the issue of notice being non-application of mind by the concerned officer. Moreover in the said order, the officer is totally silent on the grievance raised by petitioner that reasons recorded in the proposed reopening has not been provided. The court quashed and set aside the issues notice u/s 148. Consequent orders/notices are also quashed and set aside. Court observed that there is no section 148D under the Income-tax Act, 1961 (WP No. 2226 of 2022 dt. 4-5-2022) (AY. 2015-16)

Davariya Brothers Private Limited v. ACIT (Bom)(HC)(UR)

S. 148: Reassessment-Notice-Constitutional validity-The delegation authorized being only for the purpose of enlarging limitation under a valid law, such delegation could not be exercised to resurrect the provision of law that stood omitted from the statute book by virtue of its substitution made by the Finance Act, 2021, w.e.f. 01.04.2021-Reassessment notices issued under section 148 of the Act are quashed-It is left open to the assessing authority to initiate-Re-assessment proceedings in accordance with the provisions of the Act, as amended by the Finance Act, 2021 after making due compliance as required under the law. [S. 147, 148A, 149, 151, 151A, 153, 292 Relaxation of Certain Provisions) Act, 2020 (TOLA), S. 3(1) of the Act 38 of 2020, Art. 226]

The Hon'ble Bombay High Court agreeing with the views taken by the Allahabad High Court, Rajasthan High Court, Delhi High Court and Madras High Court further held that there is no savings clause for applicability of erstwhile Sections 147 to 151 of the Act, and the explanations under the impugned notifications does not cover section 147 of the Act, therefore the procedure under section 148A of the Act should be followed, and the Relaxation Act does not operate for AY. 2015-16 and subsequent years. Notice issued under section 148 of the Act was quashed.((WP NO.1334 OF 2021 (Bom)(HC) dated February 24, 2022)

Editorial: ***Followed*** High Court of Allahabad (Division Bench) in **Ashok Kumar Agarwal v. UOI (2021) 131 taxmann.com 22 (Allahabad)**, High Court of Delhi (Division Bench) in **Mon Mohan Kohli v. ACIT & Anr. (2021) 133 taxmann.com 166 (Delhi)**, High Court of Rajasthan (Single Judge) in **Bpip Infra (P.) Ltd. v. ITO (2021) 133 taxmann.com 48 (Rajasthan)**, and High Court of Calcutta in **Bagaria Properties and Investment Pvt. Ltd. and Anr. V. UOI and Ors. W.P.O. No.244 of 2021 dated Janu 17,2022** and Division Bench of Rajasthan High Court in **Sudesh Taneja v. ITO D.B. Civil Writ Petition No.969 of 2022 pronounced on January 27, 2022** and High Court of Madras (Division Bench) in **Vellore Institute of Technology V/s. Central Board of Direct Taxes and Anr. Writ Petition No.15019 of 2021 dated February 04, 2022.**

Dissented from the Chhattisgarh High Court in **Palak Khatuja v. UOI 2021 (438) ITR 622 (Chhattisgarh) (HC)**

Tata Communications Transformation Services v. ACIT (2022)443 ITR 49/ 212 DTR 241/ 325 CTR 49 (Bom) (HC)
Rajebahadur Madhusudan Trimbak v ITO (2022)443 ITR 49/ 212 DTR 241/ 325 CTR 49 (Bom)(HC)

S. 148 : Reassessment –Notice-Reasons recorded not furnished-Directions issued to Department to furnish the reasons recorded [S. 147, Art, 226]

The court dismissed the writ petition filed by the assessee against notice under section 148 of the Income-tax Act, 1961, directing the Department to provide a copy of the reasons based on which the notice was issued and the assessee to respond to the notice and the Department to proceed in accordance with law.

Nusli N. Wadia v. ACIT (2022)447 ITR 363 / 142 taxmann.com 333(Bom)(HC)

Editorial: SLP of assessee dismissed,with directions Nusli N. Wadia v. ACIT (2022) 447 ITR 376 / 142 taxmann.com 334 **/289 Taxman 80**
(SC)

S. 148 : Reassessment –Notice-After the expiry of four years-

Notifications issued by the Central Government under the Taxation and other laws (Relaxation and Amendment of Certain Provisions) Act, 2020 did not apply as the notices were issued prior to 1st April 2021-Time limit-Notices issued prior to 1st April 2021 beyond a period of four years from the expiry of the assessment year are time barred in terms of first proviso to section 147 as applicable prior to amendment made by the Finance Act, 2021-Sanction-Notice issued after seeking approval Jt CIT instead of Chief CIT/ CIT-Notice was invalid. S. 147, 151, Art, 226]

In this case, several Writ petitions were filed challenging notices issued prior to 1st April 2021 under section 148 of the Act as applicable prior to the amendment made by the Finance Act, 2021. High Court noted that the notices were issued in all these cases after a period of four years from the expiry of the relevant assessment year and, were therefore, time barred in terms of the first proviso to section 147 as in force prior to the amendment by the Finance Act, 2021. High Court further held that the notifications issued by the Central Government under the Taxation and other laws (Relaxation and Amendment of Certain Provisions) Act, 2020 did not apply in the present case as the notices were issued prior to 1st April 2021 whereas the notifications were issued to deal with situations arising from amendments made by the Finance Act, 2021. High Court also observed that the notice was bad as in one of the petitions, the notice was issued after 4 years after seeking sanction of Jt CIT instead of Chief CIT/ CIT. Notice was quashed.

Ambika Iron & Steel (P) Ltd. v. PCIT (2022) 326 CTR 871 / 213 DTR 446 (Orissa)(HC)

S. 148 : Reassessment –Notice-Jurisdiction-Notice should be issued by Assessing Officer who has jurisdiction over assessee [S. 129, 147, 148(1), 148(2), Art, 226]

On appeal against the order of single Judge the Division Bench held that notice under section 148 of the Income-tax Act, 1961, is mandatory to reopen an assessment and reassess the income of the assessee and such a notice should have been issued by the competent Assessing Officer, who has jurisdiction. The jurisdictional Assessing Officer, who records the reasons for reopening the assessment as contemplated under sub-section (2) of section 148, has to issue notice under section 148(1). Only then, would such a notice issued under section 148(1) be a valid notice. The officer recording the reasons under section 148(2) of the Act and the officer issuing the notice under section 148(1) has to be the same person. Section 129 is applicable when in the same jurisdiction, there is a change of incumbent and one Assessing Officer is succeeded by another; and when once the initiation of reassessment proceedings is held to be invalid, whatever follows thereafter must also, necessarily be invalid. Accordingly the first respondent who recorded the reasons for reopening the assessment under section 148(2), had no jurisdiction over the assessee, to issue notice dated March 28, 2018 under section 148(1). Though the files pertaining to the reassessment proceedings of the assessee were transferred, the second respondent had no authority to continue the reassessment proceedings under section 129 and hence, the notice dated December 14, 2018 issued by him was also invalid. The invalid notices so issued vitiated the entire reassessment proceedings initiated against the assessee. The notices and the consequent proceedings were invalid.(AY.2011-12)

Charu K. Bagadia v. ACIT (No. 2) (2022)448 ITR 563/ 327 CTR 419 / 215 DTR 361 (Mad) (HC)
Editorial : Decision of the single judge in Charu K. Bagadia v. ACIT(No. 1. (2022)448 ITR 560/ 327 CTR 431/ 215 DTR 372 (Mad)(HC) reversed.

S. 148: Reassessment-Notice-Law laid down by Supreme Court not followed-Matter remanded to Assessing Officer. [S. 147, Art, 226]

On appeal against the order on a writ petition remanding the matter to the Assessing Officer and failure to consider the objections raised by the assessee to reopen the assessment under section 147 of the Income-tax Act, 1961 held that the court had in the writ petition after hearing the parties and upon examining the documents produced was of the view that there was procedural irregularity by the Assessing Officer and the guidelines framed in GKN Driveshafts (India) Ltd. v. ITO(2003) 259 ITR 19 (SC) were not followed, while conducting the reassessment proceedings and therefore, had set aside the reassessment order and had remanded the matter to the Assessing Officer to pass orders afresh, after complying with the required procedure as laid down under the law. There was no infirmity or illegality in the order warranting interference. Liberty was granted to the assessee to file additional objections, if any. Thereafter, the Assessing Officer was to consider each and every point raised in the earlier objections and also the additional objections, if any, to be filed by the assessees and pass orders afresh, after following the procedure as laid down in GKN Driveshafts (India) Ltd. v. ITO.(AY.2012-13)

Pannalal Madan Bai v. ACIT (2022)448 ITR 298 (Mad)(HC)

Pannalal Kochar v. ACIT (2022)448 ITR 298 (Mad)(HC)
Editorial : Decision of single judge in Pannalal Kochar v. ACIT (2022) 19 ITR-OL 606 (Mad)(HC), affirmed.

S. 148 : Reassessment –Notice-Recording satisfaction with signature of prescribed authority mandatory-Prescribed Authority's digitally signed approval obtained after issue of notice without jurisdiction and invalid-Notice and subsequent reassessment proceedings quashed.[S. 147 151,282A, General Clauses Act, 1897 S. 3(56), Art, 226]
The assessee filed the writ petition to quash the reassessment notice on the ground that the Assessing Officer issued the notice prior to getting the approval from the competent authority. Allowing the petition the Court held that at the point of time when the Assessing Officer issued notices under section 148 he did not have the jurisdiction to issue the notices. Consequently, the notices issued by the Assessing Officer were without jurisdiction. Since there was no valid satisfaction recorded the question whether the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner for the purposes of recording of satisfaction under section 151 was a designated authority under section 282A(1) was left open. The notices issued under section 148 and the reassessment orders under section 147, if any, passed by the Assessing Officer and all consequential proceedings were quashed. The concerned authority was at liberty to initiate proceedings, if still permissible, strictly in accordance with law and on due observance of the relevant provisions of the Act and the Rules framed thereunder. Where the recording of satisfaction by the Principal Commissioner under section 151 and issuance of notice under section 148 by the Assessing Officer were simultaneous liberty was granted to the assessee to file an appeal to challenge the reassessment order.(AY.2013-14, 2014-15, 2015-16)

Vikas Gupta v. UOI (2022)448 ITR 1 / 218 DTR 273/328 CTR 1063/ 289 Taxman 443 (All)(HC)

S. 148 : Reassessment –Notice-Failure to serve a copy of the Notice issued u/s. 148 before passing the re-assessment order would render the order as infructuous-Appeal filed by Revenue dismissed since no substantial question of law arise-Section 292BB was inserted in the Act in 2008 and cannot be given retrospective effect. [S. 147, 292BB]
Tribunal came to a factual finding that before passing the re-assessment order, notice of re-opening of the assessment was never served on the taxpayer or its authorised representative. This factual finding given by the Tribunal is not controverted and hence High Court held that no substantial question of law arose. The High Court further held that the Tribunal was correct in holding that section 292BB cannot be given a retrospective effect since the same was introduced in the Act in 2008.(AY. 2007-08)
PCIT v. Mahla Real Estate Pvt. Ltd. (2022) 210 DTR 182 / 324 CTR 614 (Raj.) (HC)

S. 148 : Reassessment –Notice-Validity of E-notices-Mere digitally signing of notice under section 148 would not be issuance of notice, reassessment notices would be said to be digitally issued on date when same were e-mailed to petitioner-Since deadline for passing assessment order in most cases was 31-3-2022, proceedings pursuant to impugned reassessment notices were to be stayed till further orders. [S. 147, 149, Art, 226]

Petitioners challenged validity of e-notices issued under section 148 which were received by petitioners on or after 1-4-2021. Said notices were dated 31-3-2021 or before and were also digitally signed on or before 31-3-2021-It was held that Allahabad High Court in case Daujee Abhushan Bhandar (P.) Ltd v. UOI (2022) 136 taxmann.com 246 (All)(HC) held that point of time when a digitally signed notice in form of electronic record would be entered in computer resources outside control of originator i.e. Assessing Officer, that shall be date and time of issuance of notice under section 148 read with section 149-Whether, therefore, following said judgment mere digitally signing of notice would not be issuance of notice and impugned notices would be said to be digitally issued on date when same were e-mailed to petitioner.Since deadline for passing assessment order in most cases was 31-3-2022, proceedings pursuant to impugned reassessment notices were to be stayed till further orders.

Sharad Garg v. ITO (2022) 287 Taxman 207 /113 CCH 213 (Delhi)(HC)

S. 148 : Reassessment –Notice-Failure to dispose objections by passing speaking order-Order set aside for adjudication afresh [S. 143 (3), 147, Art, 226]

Held that assessee's objections had not been dealt with, all proceedings post assessee's objections were to be set aside solely on ground that GKN Driveshafts principle had not been strictly adhered to Matter remanded. (AY. 2008-09)

Kausalya Maruthachalam v. ACIT (2022) 287 Taxman 7 /113 CCH 298 (Mad.)(HC)

S. 148 : Reassessment –Notice-Notice for assessment year 2013-14 was issued to assessee on 1-4-2021-limitation of issuing notice expired on 31-3-2021-Notice was time barred-Direction-CBDT-Since large number of writ petitions are being filed in which date and time of issuance of notice under section 148 are in dispute, Income-tax department to be directed to ensure that date and time of triggering of e-mail for issuing notices and orders are reflected in online portal relating to concerned assesses-Binding precedents-Unless there is a stay obtained by authorities under Income-tax Act, 1961 from higher forum, mere fact of filing appeal or SLP will not entitle authority not to comply with order of High Court-Court directed the Registrar General to forward the copy of the judgement for circulating amongst authorities under the Income tax-Act, 19961 and for the observance of the principles of the judicial discipline and propriety. [S. 147, 260A, Art, 226]

Held that notice under section 148 for assessment year 2013-14 was issued to assessee on 1-4-2021, whereas limitation of issuing notice expired on 31-3-2021, notice under section 148 was time barred. Court also held that unless there is a stay obtained by authorities under Income-tax Act, 1961 from higher forum, mere fact of filing appeal or SLP will not entitle authority not to comply with order of High Court.Court also held thatsince large number of writ petitions are being filed in which date and time of issuance of notice under section 148 are in dispute and, importantly, those notices are being issued by e-mail, it is directed that respondent No. 1 shall ensure that date and time of triggering of e-mail for issuing notices and orders are reflected in online portal relating to concerned assessees. Court directed the Registrar General to forward the copy of the judgement for circulating amongst authorities

under the Income tax-Act, 19961 and for the observance of the principles of the judicial discipline and propriety. (AY. 2013-14)

Mohan Lal Santwani v. UOI (2022) 449 ITR 476/ 287 Taxman 634 / 218 DTR 313 / 329 CTR 113 (All.)(HC)

S. 148 : Reassessment –Notice-Notice was issued prior approval of Additional Commissioner-Notice was quashed [S. 147, 151(2). Art, 226]

On writ allowing the petition the Court held that notice under section 148 was issued to assessee on 25-6-2019 and prior mandatory approval of Additional dated 26-6-2019. Court held that issue of notice was illegal as there was no prior approval as required under section 151(2) of the Act. Court also observed that it is open to Respondents to take such steps as advised in law and it is open to Petitioner to raise such objections as and when they receive a fresh notice.

River Valley Meadows and Township (P.) Ltd. v. Dy. CIT (2022) 284 Taxman 536 (Bom.)(HC)

S. 148 : Reassessment –Notice-No procedural irregularity-Notice issued and objections raised-Notice valid-Writ is not maintainable there is no violation of law or principle of natural justice [S. 147 Art, 226]

Dismissing the petition the Court held that there had been no procedural irregularity. Notices were issued under section 148 of the Act, pursuant to which, return was filed by the assessee for the relevant AYs, and thereafter, reasons were sought for, the reasons were given by the Revenue, and those reasons had been objected. The assessee being the Indian subsidiary company of a foreign company had earned income, according to the Revenue, and the income had not been brought or routed through the profit and loss account, i. e., the profit and loss account of the relevant financial year and this had been unearthed subsequently only by the Revenue and prima facie, according to the Revenue, there had been a net freight of Rs. 29,50,53,532 collected through the Indian subsidiary company after allowing the expenditure, which according to the Revenue, escaped assessment. These minute details could not be gone into by the court by exercising its extraordinary jurisdiction under article 226 of the Constitution. The notice was valid.(AY. 2013-14, 2015-16)(SJ)

Bengal Tiger Line (India) Pvt. Ltd. v.Dy. CIT (2022)446 ITR 331 (Mad)(HC)

S. 148: Reassessment-Notice-Proceedings under Insolvency and Bankruptcy Code, 2016-Not a bar for issue of notice of Reassessment [S. 147, Insolvency and Bankruptcy Code, 2016, S. 10, 30(6), 31, Art, 226]

Dismissing the petition the Court held that the provisions of the Insolvency and Bankruptcy Code, 2016, cannot be interpreted in a manner which is inconsistent with any other law for the time being in force. A corporate insolvency resolution plan sanctioned and approved

cannot impinge on the rights of the Income-tax Department to pass any fresh assessment order under section 148 read with sections 143(3) and 147 of the Income-tax Act, 1961. Therefore, the proceedings under the Code cannot be pressed into service to dilute the rights of the Income-tax Department under the Income-tax Act, 1961 to reopen the assessment under section 148 of the Act. The Income-tax Department is not precluded from reopening the assessment completed under section 143(3) of the Act. The notices of reassessment were valid.(AY. 2011-12 to 2013-14)

Dishnet Wireless Ltd. v. ACIT (OSD) (2022)446 ITR 227/ 215 DTR 337/ 288 Taxman 197/(2023) 330 CTR 567 (Mad)(HC)

S. 148 : Reassessment –Notice-Limitation-Doctrine of substantial compliance-Mere signing of notice is not sufficient-Date of issue would be date on which notice was served on assessee-Notice dated 31-3-2018 served on assessee through E-Mail on 18-4-2018 for AY. 2011-12-Notice barred by limitation.[S. 147, 149, 282, R. 127, Art, 226]
Allowing the appeal the Court held that the notice under section 148 for reopening the assessment was not sent to the assessee within the time stipulated under section 149 and hence, the reassessment proceedings initiated under section 147 were vitiated. The notice dated March 31, 2018 issued by the Assessing Officer was served on the assessee through e-mail, only on April 18, 2018. Though the Department produced the relevant pages of the notice server book maintained by it to show that the notice dated March 31, 2018 was within the limitation period, it only disclosed that the notice dated March 31, 2018 was returned on April 6, 2018. Notice was quashed.(AY. 2011-12)

Parveen Amin Bhathara (Smt.) v.ITO (2022)446 ITR 201 / 218 DTR 51 / 328 CTR 831(Mad)(HC)
Editorial : Sadhana Tolasaria v. ITO(2021) 18 ITR-OL 88(Mad)(HC), decision of Single judge reversed.

S.148: Reassessment-Notice-Constitutional validity-The delegation authorized being only for the purpose of enlarging limitation under a valid law, such delegation could not be exercised to resurrect the provision of law that stood omitted from the statute book by virtue of its substitution made by the Finance Act, 2021, w.e.f. 01.04.2021-Reassessment notices issued under section 148 of the Act are quashed. [S. 147, 148A, 149, 151, 151A, 153, 292 Relaxation of Certain Provisions) Act, 2020 (TOLA), S. 3(1) of the Act 38 of 2020, Art. 226]

Allowing the petitions, that Explanations A(a)(ii)/A(b) to the Notifications dated March 31, 2021 and April 27, 2021 were ultra vires the 2020 Act and were therefore bad in law and null and void. All the notices issued under section 148 of the 1961 Act were quashed with liberty to the Assessing Officers to initiate fresh reassessment proceedings in accordance with the relevant provisions of section 148A of the 1961 Act inserted by the Finance Act, 2021 and after compliance with the required mandatory conditions.

Bagaria Properties and Investment Pvt. Ltd. v. UOI (2022)441 ITR 359/ 209 DTR 449 / 324 CTR 449 (Cal) (HC)
Manoj Jain v. UOI (2022)441 ITR 418 (Cal) (HC)

Mon Mohan Kohli v. CIT (2022)441 ITR 207/ 209 DTR 65/ 324 CTR 28 (Delhi) (HC)
Vikrant Suri v. ITO (2022)441 ITR 726 (Delhi) (HC)
Sudesh Taneja v. ITO (2022)442 ITR 289/ 210 DTR 1005/ 324 CTR 577/ 286 Taxman 284 (Raj) (HC)
Vellore Institute of Technology v. CBDT (2022)442 ITR 233/ 211 DTR 233/ 325 CTR 148 (Mad)(HC)

Bharati Hiren Uttamchandani v. UOI (2022) 285 Taxman 385 (Guj.)(HC)
Dharmendra Gupta (HUF) v. ITO (2022) 285 Taxman 484 (Raj)(HC)

Jalaj Joshi. v. ACIT (2022) 286 Taxman 688 (Raj)(HC)
Mohammed Mustafa v. ITO (2022)445 ITR 608/ 214 DTR 108 / 326 CTR 759/ 287 Taxman 277 (Karn)(HC)

S. 148: Reassessment-Notice-Constitutional validity-Without following the procedure-Issue of notice is held to be valid. [S. 147, 148A, 149, 151, 151A, 153, 292 Relaxation of Certain Provisions) Act, 2020 (TOLA), S. 3(1) of the Act 38 of 2020, Art. 226]
Assessee challenged reopening notice under section 148 issued against it dated 30-6-2021 on grounds that same was issued without following procedure under section 148A which came into force on 1-4-2021 by Finance Act, 2021 and without giving assessee an opportunity of being heard and hence was illegal. Court held that individual identity of section 148, which was prevailing prior to amendment and insertion of section 148A was insulated and saved uptill 30-6-2021 therefore notice dated 30-6-2021 did not require any interference and same was held to be valid (AY. 2013-14, 2014-15, 2015-16)
Labtund Infrastructure (P.) Ltd. v. P CIT (2022) 284 Taxman 399 (Chhattisharh)(HC)
Ashok Kumar Agrawal v. UOI (2022) 284 Taxman 342 (Chhattisgargarh)(HC)
Sanjay Agrawal v.PCIT(2022) 285 Taxman 576 (Chhattisgargarh)(HC)

S. 148: Reassessment-Notice-Constitutional validity-The delegation authorized being only for the purpose of enlarging limitation under a valid law, such delegation could not be exercised to resurrect the provision of law that stood omitted from the statute book by virtue of its substitution made by the Finance Act, 2021, w.e.f. 01.04.2021-Directions issued [Art, 226]

On a writ petition challenging the constitutional validity of certain provisions of the Central Board of Direct Taxes Notification No. 20 of 2021 dated March 31, 2021 [2021] 432 ITR (St.) 141 and Notification No. 38 of 2021 dated April 27, 2021 [2021] 434 ITR (St.) 11. Court held that similar petitions had been entertained by other High Courts and interim protection had been granted, the court permitted the respondents to file a reply and directed that till the next date of hearing, no coercive action should be taken against the assessee pursuant to the challenged notifications. Referred Tata Communications Transforrmation Service Ltd v. ACIT (2021) 18 ITR-OL 309 (Bom) (HC)

Jagdish Kumar Basantani v. ITO (2022) 440 ITR 39 (MP) (HC)

S. 148: Reassessment-Notice-Constitutional validity-The delegation authorized being only for the purpose of enlarging limitation under a valid law, such delegation could not be exercised to resurrect the provision of law that stood omitted from the statute book by virtue of its substitution made by the Finance Act, 2021, w.e.f. 01.04.2021-Reassessment notices issued under section 148 of the Act are quashed-It is left open to the assessing authority to initiate-re-assessment proceedings in accordance with the provisions of the Act, as amended by the Finance Act, 2021 after making due compliance as required under the law. [S. 147, 148A, 149, 151, 151A, 153, 292 Relaxation of Certain Provisions) Act, 2020 (TOLA), S. 3(1) of the Act 38 of 2020, Art. 226]

It was held that as a piece of delegated legislation the notifications issued in exercise of such powers, had to be within the confines of such powers. In plain terms under Section 3(1) of the TOLA the Government of India was authorized to extend the time limits by issuing notifications in this regard. Issuing any explanation touching the provisions of the Income Tax Act was not part of this delegation at all. The CBDT while issuing the notifications dated 31.03.2021 and 27.04.2021 when introduced an explanation which provided by way of clarification that for the purposes of issuance of notice under Section 148 as per the time limits specified in Section 149 or 151, the provisions as they stood as on 31.03.2021 before commencement of the Finance Act, 2021 shall apply, plainly exceeded its jurisdiction as a subordinate legislation. The subordinate legislation could not have travelled beyond the powers vested in the Government of India by the parent Act. The subordinate legislature cannot be permitted to amend the provisions of the parent Act. Impugned Notices are quashed. The Petitions are allowed.

Followed, *Ashok Kumar Agarwal & Ors. v. UOI (All.)(HC), Bpip Infra Pvt. Ltd. and Ors. vs. ACIT and Ors (Raj (HC)*; and *Mon Mohan Kohli v. ACIT (Delhi) (HC) and Bagaria Properties and Investments Pvt. Ltd. Vs. Union of India (WPO No.244/2021) decided on January 17, 2022 (*D.B. Civil Writ Petition No. 969 of 2022 dated January 27, 2022)

Sudesh Taneja v. ITO (Raj)(HC) www.itatonline.org
Dharmendra Gupta (HUF) v.ITO (2022) 285 Taxman 484(Raj)(HC)
Kandoi Metal Powders Manufacturing Company (P.) Ltd v.ACIT (2022) 285 Taxman 500 (Raj)(HC)

S. 148: Reassessment-Notice-Constitutional validity-The delegation authorized being only for the purpose of enlarging limitation under a valid law, such delegation could not be exercised to resurrect the provision of law that stood omitted from the statute book by virtue of its substitution made by the Finance Act, 2021, w.e.f. 01.04.2021-Reassessment notices issued under section 148 of the Act are quashed-It is left open to

the assessing authority to initiate-re-assessment proceedings in accordance with the provisions of the Act, as amended by the Finance Act, 2021 after making due compliance as required under the law. [S. 147, 148A, 149, 151, 151A, 153, 292 Relaxation of Certain Provisions) Act, 2020 (TOLA), S. 3(1) of the Act 38 of 2020, Art. 226]

It was held that the Explanations A(a)(ii)/A(b) to the Notifications dated 31st March, 2021 and 27th April, 2021 are declared to be ultra vires the Relaxation Act, 2020 and are therefore bad in law and null and void. All the impugned notices under Section 148 of the Income Tax Act are quashed with liberty to the Assessing Officers concerned to initiate fresh re-assessment proceedings in accordance with the relevant provisions of the Act as amended by Finance Act, 2021 and after making compliance of the formalities as required by the law.
Followed, *Ashok Kumar Agarwal & Ors. v. UOI (All.)(HC), Bpip Infra Pvt. Ltd. and Ors. vs. ACIT and Ors (Raj (HC)*; and *Mon Mohan Kohli v. ACIT (Delhi) (HC)* (WPA No.11950 of 2021 dated January 17, 2022))

Manoj Jain v. UOI (2022) 441 ITR 418 / 134 taxmann.com 173 (Cal) (HC)

S. 148 : Reassessment –Notice-Name struck off-Notice served on person not authorised by the assessee is not valid service-Assessment order was quashed-Section 292BB is prospective and applicable from AY. 2009-10 onwards [S.147, 282, Code of Civil Procedure 1908, Order, 5]

The assessment order was passed in the name of the company which was dissolved by the Registrar of Company and its name has been struck off. On appeal the CIT(A) held that the assessment order was without jurisdiction and bad in law. On appeal the Tribunal held that the AO has not sent any notice u/s 148 to the Registered Office address either through registered post or speed post and the AO has made no efforts to serve notice through Affixtures. The Tribunal also held that there was no power of attorney of Shri Anand Sharma CA given by the assessee, in such circumstances even if any notice served on shri Anand Sharma would be of no consequences in the absence of any valid authority / authorisation. The Tribunal also held that section 292BB was not applicable. Accordingly the appeal of the Department was dismissed. On appeal the High Court affirmed the order of the Tribunal and held that section 292BB of the Act cannot be given retrospective effect.(ITA No. 47 of 2020 dt.9-11-2021)(AY. 2007-08)
PCIT v. Mahla Real Estate (P) Ltd (Raj)(HC) www.itatonline.org

S. 148 : Reassessment –Notice-Participated in reassessment proceedings Final decision is not taken-Writ is premature-Dismissed.[S. 147, Art, 226]

The assessee was issued a notice under section 148 of the Act On a writ petition contending that the procedure adopted in reopening the assessment was illegal. Dismissing the petition the Court held the reassessment proceedings under section 147 had started with the issuance of the notice under section 148 and the assessee had taken part in the proceedings. The

Department had not taken a final decision with regard to the reassessment proceedings. Therefore, the writ petition was premature and not maintainable.(AY.2017-18)

Exotica Promoters LLP v. ITO (2022)441 ITR 533 (Gauhati) (HC)

S. 148: Reassessment-Objections raised-Not disposed by Assessing Officer-Matter remanded to the Assessing Officer to dispose of objections by speaking order [S. 143(2),147, Art, 226]

On writ the court held that the Assessing Officer had not passed a speaking order on the objections raised by the assessee to the reasons for reopening of the assessment under section 147 pursuant to the notice issued under section 148. The matter was remanded to the Assessing Officer to pass a speaking order disposing of the objections raised by the assessee to the reasons for reopening.(AY.2018-19)

Jothi Malleables P. Ltd. v. ACIT (2022)441 ITR 70 (Mad) (HC)

S. 148 : Reassessment –Notice-Pendency of assessment-Time limit for issue of notice u/s 143(2) was not expired-Notice issued for reassessment was quashed [S.143(1)(a),. 143(2), 143(3) 147]

The Tribunal upheld the issuance of notice under section 148 though the Assessing Officer could have issued a notice under section 143(2) to make the regular assessment under section 143(3). On appeal the Court held that the order under section 143(1)(a) was confirmed on August 11, 2000 when the return was filed and the notice under section 148 came to be issued before the assessment could have been done. The Tribunal had committed an error in upholding the notice issued under section 148. Order of CIT(A) was accepted.

Loku Ram Malik v CIT (2022) 440 ITR 159 (Raj) (HC)

S. 148 : Reassessment –Notice –Reason to be formed before Issue of notice - Reassessment not valid. [S. 50C, 147]

Held, that there was nothing on record to demonstrate that the Assessing Officer was in receipt of any information or had any material in his possession prior to his recording of reasons and issuance of notice under section 148, that income had escaped assessment. Thus, the additions made by the Assessing Officer was directed to be deleted. (AY. 2009-10).

Dhoot Stono Crafts P. Ltd. v. ACIT (2022)98 ITR 249 (Jaipur) (Trib)

S. 148: Reassessment –Notice – Non filing of ITR- Agriculturist- Deposits of cash in assessee's bank- Deposit in nature of exchange of agricultural land- Order passed by Assessing Officer without reason to believe and proper verification- Recorded statements not supplied to assessee- Additions made on suspicion- Additions deleted-Reassessment quashed. [S. 147]

Held, that the Assessing Officer without the reasons to believe and proper verification has passed the order under section 148. Therefore, the notice under section 148 was liable to be quashed. Further, it was held that the addition was made by the Assessing Officer purely on suspicion and there was no effective material available on record to justify it. Therefore, the additions were to be deleted. (AY. 2009-10)

Jagsir Singh v. ITO (2022) 98 ITR 499 (Amritsar) (Trib)
Sukhraj Singh v. ITO (2022) 98 ITR 499 (Amritsar) (Trib)

S. 148 : Reassessment –Notice - Time limit for issuance of notice u/s 143(2) has not expired – Reassessment notice is bad in law [S. 143(2), 147]

Held that notice under section 148 was issued before expiry of time limit under section 143 (2) of the Act the initiation of reassessment proceedings under s. 147 is invalid in law. Followed CIT v. Qatalys Software Technologies Ltd (2009) 308 ITR 249 (Mad) (HC) CIT v. KM Pachayappan (2008) 304 ITR 264 (Mad) (HC) , Trustees of H.E.H. Nizam's Supplemental Family Trust v. CIT (2000) 159 CTR 114 / 242 TR 381 (SC) (AY. 2012-13)

Rupal Bhupendrasingh Sandhu v. ITO (2022) 219 TTJ 12 (UO) (Ahd)((Trib)

S. 148: Reassessment – Notice – Minor – Form No 26AS – No reasons were recorded by the Assessing Officer Ward 6(3) , who has issued the notice – Notice was not issued by the Jurisdictional officer –Objection was not raised in the course of assessment proceedings – After participating in the assessment proceedings and completion of assessment the jurisdictional issue cannot be raised – Non application of mind by the sanctioning Authority – Reassessment was quashed . [S.4 ,5, 64(IA)124(3), 133(6), 147 , 151, Contract Act , 1872 , S. 11]

The assesseee was minor during the relevant previous year . The assessment was reopened and assessment was completed under section 144 of the Act . On appeal the CIT(A) confirmed the addition . On appeal the appellant contended that the Assessing Officer recorded the reasons merely on the basis of figures recorded in the Form 26AS without any verification or examination of the same . Tribunal held that the Assessing Officer has not applied the mind whether provision of 64(IA) is applicable to the facts of the appellant and the sanction was given mechanically . Accordingly the reassessment notice and proceedings were quashed . (AY. 2010 -11)

Apoorva Sharma v. ITO (2022) 218 TTJ 959/ 216 DTR 300 (Jaipur)(Trib)

S. 148 : Reassessment –Notice - Proceedings for rectification of mistake dropped after considering reply- Reassessment proceedings cannot be held to be invalid.[S. 147 , 154]

Held, that the provisions under sections 154 and 148 of the Act are for different purposes and so long as the conditions for initiating proceedings under section 148 of the Act were satisfied, the initiation of proceedings could not be held to be invalid. (AY. 2009-10, 2010-11)

Karnataka State Beverages Corporation Ltd. v. ACIT (2022) 99 ITR 325 (Bang) (Trib)

S. 148 : Reassessment –Notice – — Death of assessee — Department was not informed of death of assessee even though notice was received by family members - Assessment order not invalid on ground of notice had been served on deceased - No return filed - — Failure to issue notice under Section 143(2) does not render reassessment proceedings invalid- Substantial cash deposited in Bank Account of assessee — Sufficient for formation of belief – Addition is confirmed . [S. 68 , 143(2) , 147]

Held that the Department was not informed of death of assessee even though notice was received by family members . Assessment order not invalid on ground of notice had been served on deceased . No return was filed hence failure to issue notice under Section 143(2) does not render reassessment proceedings invalid. Substantial cash deposited in Bank Account of assessee is sufficient for formation of belief . No explanation was furnished . Addition is confirmed . *(* AY. 2011-12)

Ashoksinh Indrasinh Kumpavat v. ITO (2022) 99 ITR 19 (SMC) (SN.)(Ahd) (Trib)

S. 148: Reassessment –Notice -Reason should be based on tangible material — Sanction for notice accorded mechanically — Notice was not valid. [S. 147, 151]

The Tribunal held that the application of mind was required while issuing notice under section 148 of the Act and not during assessment proceedings because the challenge was to the notice for reopening the assessment which when served, set the law into motion. There was no tangible evidence to believe that income had escaped assessment. There was no application of mind while issuing notice under section 148 for reopening the assessment. The assumption of jurisdiction by the issue of notice under section 148 of the Act was bad in law and made the reassessment order void ab initio. (AY. 2011-12)

Lakhmi Chand Tejoo Mal v. ACIT (2022)96 ITR 612 (Delhi) (Trib)

S. 148: Reassessment –Notice - Jurisdiction assumed on issue of notice not on its service — Order is valid - Address shown on Permanent Account Number database at relevant time mentioned in memorandum of appeal and even replies furnished during appellate proceedings — No satisfactory explanation for claim that notice was sent to wrong address. [S. 147 , 149, R. 127]

The Tribunal held that the jurisdiction to assess or reassess is assumed on the issue of a notice under section 148(1), and not on its service. The time limit under section 149 is again with reference to the issue of notice under section 148, and not its service. There was no dispute qua the issue of notice under section 148(1) and jurisdiction to proceed to assess under section 147 had been validly assumed in the instant case. Address shown on Permanent Account Number database at relevant time mentioned in memorandum of appeal and even replies furnished during appellate proceedings , no satisfactory explanation for claim that notice was sent to wrong address **.** (AY. 2005-06)

ACIT v. Kamlesh Kumar Sahu (2022) 96 ITR 53 (SN) (Jabalpur) (Trib)

S.148: Reassessment – Notice - Validity — Incorrect bank transaction in the form of bank deposits — Wrong facts recorded for formation of belief that income has escaped assessment — Reassessment was quashed [S. 147, 148]

Where wrong facts have been recorded for formation of reason to believe, the assessment proceedings deserve to be quashed. The Tribunal held that it was merely on the basis of incorrect bank transaction in the form of bank deposits, the Assessing Officer had recorded

the reasons and thus he had wrongly assumed the jurisdiction. Therefore, the assessment framed for incorrect belief was deserved to be quashed. (AY.2011-12

Sourav Bakshi v. ITO (2022) 95 ITR 279 (Amritsar)(Trib)

S. 148 : Reassessment –Notice - Recorded reasons not supplied – Reassessment is not valid [S. 147]

Allowing the cross-objection and dismissing the appeal of the revenue the Tribunal held that the assessee had made a request to the Assessing Officer to provide the reasons for initiation of proceedings under section 147 of the Act and such reasons recorded were not furnished to the assessee. When the reasons recorded were never communicated to the assessee inspite of requests made, the Assessing Officer lacked the jurisdiction to pass reassessment order which was liable to be quashed.(AY.2010-11)

ACIT v. Beekay Enterprises (2022)95 ITR 21 (SN)(Pune) (Trib)

S. 148 : Reassessment –Notice - Recorded reasons not supplied – - Assessment order was quashed . [S. 147, 68 , 69C 133A]

The assessee has filed return of income on 15-10-2020 declaring total income of Rs. 67,09,080/-. Thereafter, a survey action u/s 133-A of the Act was conducted on 16-01-2013 by Investigation Wing of the Department. Consequently, the assessee has declared an additional income of Rs. 1,11,06,967/- on 27-3-2015. Subsequently, the assessment u/s 143(3) r.w.s. 147 of the Act was completed on 27-3-2015 assessing total income at Rs. 4,13,15,312/- as against the returned income of Rs. 67,09,080/- by making an addition on account of inflated purchases from Hawala Parties at Rs. 3,46,06,232/- (Rs. 2,87,17,113/- (including additional income declared) plus Rs. 57,89,119/-}. Aggrieved, the assessee preferred an appeal before the ld. CIT(A) who vide his order dated 24-3-2017 restricted the total income at Rs. 69,21,245/- being 20% of alleged bogus purchases from hawala dealers and provided relief to the assessee. The Revenue has filed an appeal before the Tribunal on the amount of deletion by the CIT(A) . The assessee has filed cross objection on the ground of the reassessment mainly on the ground that the reassessment order was passed without disposing the objection hence the order is bad in law . Tribunal relied on the order of the Jurisdictional High Court in New Era Shipping Ltd (2021)) 430 ITR 431(Bom)(HC) and quashed the reassessment proceedings . (AY. 2010 -11)
Beekay Enterprises v. ACIT (2022) 95 ITR 21 (Pune)(Trib)

S. 148 : Reassessment –Notice - Improper manner of service of notice and nonservice of notice to the relevant database address of the assessee – Order was quashed [S. 144, 282, 292BB , Order V, rule 17 of the Code of Civil Procedure, 1908]
Held that service of notice upon the assessee, not in accordance with the provisions of the Act . Service of notice through Speed Post AD and also by affixture of the notice at an address other than the PAN database address. Held that improper manner of service of notice and held as nonservice of notice to the relevant database address of the assessee and consequently, the assessment order passed u/s 144 r.w.s. 148 of the Act has been held void and liable to be quashed. Relied upon, Rameshwar Sirkar v. ITO(1973) 88 ITR 374

(Cal.)(HC) Chandra Agencies v. ITO (2004) 89 ITD 1 (Delhi) (Trib), PCIT v . I-Ven Interactive Ltd. (2019) 110 taxmann.com 332/ 311 CTR 165/ 182 DTR 473 (SC) (AY. 2019 -20)
Sohan Lal Bhatoya v. ITO (2022) 220 TTJ 1155 / 219 DTR 233 (Amritsar)(Trib)

S. 148 : Reassessment –Notice-Time limit for issuance of notice under section 143(2) has not expired-Notice for reassessment can be issued [S. 139, 143(2) 143(3), 147]

Held that notice under section 148 can be issued by Assessing Officer even if time-limit for issuance of notice under section 143(2) has not expired in pursuance of return filed under section 139 for completing regular assessment under section 143(3). Assessing Officer only has to show that there is a case of under assessment as mentioned in either of three clauses to Explanation 2 to section 147. Clause (b) to Explanation 2 clearly provides that where assessment is not completed, still there could be a case of deemed escapement of income and notice under section 148(1) can be issued irrespective of fact whether assessment proceedings initiated by virtue of filing return or assessment proceedings by way of issuance of notice under section 143(2) are concluded or not.Period of notice shall be counted from relevant assessment year for limitation of issuing notice under section 148 which period also covers period of notice to be issued as per section 143(2). (AY. 2012-13)
DCIT v. C. Gangadhara Murthy. (2022) 197 ITD 80 (Bang.) (Trib.)

S. 148: Reassessment-Two notice-Same assessment year-Issue of second notice during pendency of earlier reassessment-Second notice invalid –Reassessment invalid. [S. 147, 151]
The Assessing officer issued two notices under section 148, containing different reasons to believe, both of which were approved by the Commissioner on the same day. The first notice diverted the jurisdiction of the Assessing officer from initiating another reassessment proceeding. At the time of the second notice, the AO had already initiated the reassessment proceedings through the first notice. Once the reassessment proceedings are pending, the entire assessment is open and not confined to the reasons recorded by the AO for assuming jurisdiction. Instead, it should have issued both the reasons in the first reopening notice and not taken recourse to initiate piecemeal reassessment proceedings. As the AO is precluded from simultaneously embarking upon two sets of proceedings u/s 147 of the Act, the second notice and the reassessment proceedings based on it are quashed. (AY. 2009-10)
Kashmir Singh v. ITO (2022) 216 TTJ 523/ 211 DTR 217 (Amritsar) (Trib.)
S. 148 : Reassessment –Notice-Service of notice by affixture-Service of notice on consultant-Participated in the proceedings-Objection was raised for the first time before ITAT-For the limited purposes to verify the factual position as to whether the objections raised by the assessee through the letters referred or not, the ITAT restored the matter to the file of the AO for the limited purpose of making necessary verifications.[S. 147, 254(1), 282, 292BB, Code of Civil Procedure, 1908, Order V-Rule 17 and Rule 19]

Held that service of notice by way of affixture at a wrong address is not in conformity with the manner contemplated in Section 282 of the Act r.w. Order V-Rule 17 and Rule 19 of the Code of Civil Procedure, 1908 (V of 1908) as the same is not witnessed by an independent

witness-The service of notice to the assessee's counsel for the first time in the month of February–2016 is much beyond the prescribed period of six years from the end of the relevant assessment year. Held that the AO had invalidly assumed the jurisdiction for reopening the concluded assessment. Tribunal also held thatthe letters raising the objections against the validity of the service of notice were produced before the ITAT as well the records / entries available in the order sheet held for the limited purposes to verify the factual position as to whether the objections raised by the assessee through the letters referred or not, the ITAT restored the matter to the file of the AO for the limitation purpose of making necessary verifications..(AY. 2008-09)

Harsh Vardhan v. CIT (2022) 64 CCH 367 / (2022) 216 TTJ 923 / 212 DTR 137 (Amritsar)(Trib)

S. 148 : Reassessment –Notice-Dispatched by speed post within time but retuned by postal authorities-Notice never served-Reassessment proceedings in valid.[S. 147, 149]

Held that the assessment records showed that although the Assessing Officer had issued notice under section 148 of the Act to the assessee on March 26, 2016, despatched by speed post on March 28, 2016, it was never served on the assessee and was returned by the postal authorities and was available in the case record. The order sheet entries showed that no effort was made by the Assessing Officer to serve the notice under section 148 on the assessee. Therefore, the reassessment proceedings finalised by the Assessing Officer without serving the notice under section 148 were invalid.(AY. 2009-10)

Rohtash v. ITO (2022)94 ITR 56 (SN)(Delhi)(Trib)

S. 148 : Reassessment –Notice-Service of notice-Information through RTI-Generalistic notice issued without mentioning full and correct address of assessee would not be a valid notice for reopening of assessment-Matter remanded to the file of CIT(A). [S. 147]

Assessee challenged reassessment order passed by Assessing Officer on assumption of jurisdiction. It was noticed from information received by assessee under RTI that notice issued under section 148 was sent to an incomplete address by merely mentioning name of assessee and general location of city. Allowing the appeal the Tribunal held that generalistic notice issued without mentioning full and correct address of assessee could not be said to be a valid notice for reopening assessment. Matter remanded to the file of CIT (A) to decide the issue of jurisdiction and merit.(AY. 2011-12)

Santosh.(Smt.) v. ITO (2022) 192 ITD 189 (Delhi) (Trib.)

S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Reason given for notice-Existence of alternate remedy-Writ is not maintainable.[S. 148A(b), 148(d), Art, 226]

The High Court dismissed the writ petition filed against the order under section 148A(d) of the Income-tax Act, 1961 and the notice whereby the objections raised by the assessee to the

notice issued under section 148A(b) were dismissed. On a petition for special leave to appeal dismissing the petition the Court held that what was challenged before the High Court was the reopening notice under section 148A(d) of the Act. The notices had been issued after considering the objections raised by the assessee. If the assessee had any grievance on the merits thereafter, that had to be agitated before the Assessing Officer in the reassessment proceedings. The High Court had rightly dismissed the writ petition. No interference was called for.(AY.2018-19)

Anshul Jain v. P CIT (2022)449 ITR 256/ 329 CTR 483/ 219 DTR 169 / 289 Taxman 239 (SC)

Editorial: Refer High Court dismissing the writ, Anshul Jain v. PCIT (2022)449 ITR 251/ 143 taxmann.com 37 (P&H)(HC)

S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Accommodation entries-Notice was issued under section 148 of the Act (Unamended Act)-Directions given by the Supreme Court in Ashish Agarwal were applicable to cases, where notices under section 148 had been issued during period 01 st April to 30 th June 2021-Notice issued under section 148A(b) is held to be bad in law [S. 148A(b), 148A(d), Art, 226]

Pursuant of the direction of the Supreme Court in UOI v. Ashish Agarwal (2022)SCConline SC 543 / 442 ITR 1 (SC), the notice under section 148(b) was issued on the petitioner on 2 nd June 2022, alleging that the petitioner was a beneficiary of accommodation entries provided by entities and has booked non-genuine bogus sales. The notice u/s 148 was issued on 31 st March, 2021 and served via email on same day. On writ allowing the petition the Court held that Revenue having issued and served notice under section 148 of the unamended Act could not have issued another notice under section 148A(b) of the Act. Court also held that directions given by the Supreme Court in Ashish Agarwal were applicable to cases, where notices under section 148 had been issued during period 01 st April to 30 th June 2021. Consequently show cause notice as well as order passed under section 148A(d) and notice issued under section 148 both are quashed.(AY. 2017 18)

Nagesh Trading Co v. ITO (2022) 219 DTR 156 (Delhi)(HC)

S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Violation of principles of Natural Principle-Order passed against assessee without considering the reply-Remitted back the to the Assessing Officer to issue fresh notice and provide time period of 7 days to file a reply and the assessee was directed to file a reply through E-governance only.[S. 148 (d), 148 (b), Art. 226]

The Respondent issued notice to assessee through E-governance and RPAD on 17.03.2022. On receipt of said notice by RPAD, the assessee addressed a communication via RPAD requesting two weeks' time to file reply with supporting documents as he was out of station. The said communication was received and acknowledged by the Respondent. However, Respondent passed an order against the assessee stating that the communication was not received through E-portal. On Writ Petition, the Hon'ble Bombay High Court observed that ground of ignoring the communication as it is not received through e-portal will amount to violation of principles of natural justice and that a time period of 7 days should be provided for a reply. The Hon'ble Court remitted back the matter to Respondent and directed the

Respondent to issue fresh notice and provide time period of 7 days to file a reply and the assessee was directed to file a reply through E-governance only. (AY. 2015-16) (SJ)

Ravishankar G. v. ITO (2022) 327 CTR 61 (Mad)(HC)

S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Penny stock-Long term capital gain and short-term capital gain-Failure to provide bifurcation-Writ petition dismissed. [S. 10(38), 45, 148, 148(a)(d),](Art, 226]

The Petitioner has filed a Writ Petition against order passed under Section 148A(d) and notice issued under Section 148 on the ground that both order and notice are without jurisdiction as income alleged to have escaped assessment is below jurisdictional requirement of Rs. 50 lakhs. The Petitioner claims to have paid Long Term Capital Gain and Short-Term Capital Gain while as per impugned order, amount of penny stocks sold amounting to Rs. 50,10,500/-has escaped assessment. The Court while disposing off the Writ Petition without interfering in the impugned order observed that the petitioner has failed to provide bifurcation between Long Term Capital Gain and Short-Term Capital Gain along with calculation of income furnished on record. Writ petition was dismissed. (AY. 2015-16)

Saroj Bhatia v. PCIT (2022) 218 DTR 142/328 CTR 846/145 taxmann.com 237 (Delhi) (HC)

S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Lack of jurisdiction of AO-Order u/s 148A(d) and notice u/s 148 quashed [S. 148, 148A(d) Art, 226]

For AY 2018-19, the Petitioner (based in Delhi) filed a writ petition challenging the order u/s 148A(d) along with the notice issued u/s. 148 issued by the AO (based in Jaipur), primarily on the ground that (i) notice for proposed initiation of re-assessment was issued by a non-jurisdictional assessing officer, (ii) the notice u/s 148 was issued to a non-existing entity without proper sanction and (iii) the notice was issued on factually incorrect grounds. The Delhi High Court held that the AO (based in Jaipur) did not have jurisdiction over the Petitioner to propose the initiation of reassessment proceedings. Accordingly, the order passed u/s 148A(d) as well as notice was issued u/s. 148 were set aside and quashed. (AY. 2018-19)

Indus Towers Ltd. v. ITO (2022) 214 DTR 70 / 326 CTR 885 (Delhi)(HC)

S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Order passed on the different ground-Contrary to CBDT Circular dated Ist August 2022-Order was quashed. [S. 148A(b),148(a)(d), 151, Art, 226]

Honourable single Judge set aside the order. On appeal the order was quashed. Assessee had submitted the explanation to the notice along with documents supporting their claim but the AO had given up the said allegation which formed the basis of the notice and proceeded on fresh ground for alleging that the transaction with some other company was an

accommodation entry; on that score the order dt. 7th April,2022 is liable to be set aside in its entirety without giving any opportunity to reopen the matter on a different issue No further action can be taken by the Department against the assessee on the subject issue. Referred,CBDT Circular dated Ist August 2022 which has referred earlier circular dated 1 st August, 2022 para 3 therein, it has been stated as follows :

"(3). Further, it is re-emphasized that-

(i) Before initiating proceedings under section 148/ 147 of the Act, any information available on data-base /portal of the Income-tax Department shall be verified before drawing any adverse inference again the tax payers. It is not out of place to mention here that the information made available / data uploaded by the reporting entities may not be fully accurate due to inter alia, error of human nature, etc. Therefore, due verification may be carried out and opportunity of being heard be given to the tax payer before initiating proceedings under section 148 / 147 of the Act.

(ii) The supervisory authorities are hereby advised to keep an effective supervision so as to ensure that all extant instructions / Guidelines / Circulars / SOPs are duly followed by the Assessing Officers in their charge. "

On the facts the order of single judge remanding the matter to the assessing Officer is also set aside. Consequently, no further action be taken by the department against the appellant / assessee on the subject issue.

Excel Commodity & Derivative (P) Ltd v. UOI (2022) 328 CTR 710/ 217 DTR 458 (Cal)(HC)

S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-No reasoning or any discussion found on the contention raised-Order set aside for passing a speaking order. [S. 148A(d), Art, 226]

Held that on perusal of the order under s. 148A(d), no reasoning or any discussion was found on the contention raised by the assessee in its objections. The order was held to be non-speaking and therefore violative of the Principles of Natural Justice. The matter was remanded back to the AO for passing a fresh order in accordance with the law and by passing a reasoned speaking order. (AY. 2018-19)

Excel Commodity & Derivative (P) LTD. v UOI (2022) 328 CTR 715 / 217 DTR 463 (Cal)(HC)

S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Faceless Assessment-Personal hearing through video conference-Opportunity of hearing denied-Matter remand-[S. 144B, 147, 148, Art, 226]

The Petitioner filed a writ petition challenging the notice issued u/s 148, order rejecting objections and the assessment order, inter alia on the ground that the Petitioner was denied the opportunity of a personal hearing. The Petitioner claimed to have logged into the portal well ahead of the scheduled time, but the hearing did not commence. Therefore, the Petitioner sought a second opportunity for a hearing. However, the AO alleged that the Petitioner had not attended the scheduled personal hearing and also, denied a second opportunity for a personal hearing on the ground that the assessment was getting time-barred.

The Karnataka High Court accepted the evidence provided by the Petitioner regarding its timely attendance of the personal hearing through video conference and the fact that the personal hearing had not commenced at the scheduled time. The High Court further observed that the Revenue had no evidence to contradict the same. Therefore, the High Court directed

another opportunity for a personal hearing extended to the Petitioner in line with the Faceless Assessment Scheme. The assessment order was thus set aside

Harsh Bhavesh Patel (Smt) v. NFAC (2022) 327 CTR 598 /216 DTR 217 (Karn)(HC)

S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Lack of jurisdiction of AO-Order u/s 148A(d) and notice u/s 148 quashed [S. 148, 148A(d) Art, 226]

For AY 2018-19, the Petitioner (based in Delhi) filed a writ petition challenging the order u/s 148A(d) along with the notice issued u/s. 148 issued by the AO (based in Jaipur), primarily on the ground that (i) notice for proposed initiation of re-assessment was issued by a non-jurisdictional assessing officer, (ii) the notice u/s 148 was issued to a non-existing entity without proper sanction and (iii) the notice was issued on factually incorrect grounds. The Delhi High Court held that the AO (based in Jaipur) did not have jurisdiction over the Petitioner to propose the initiation of reassessment proceedings. Accordingly, the order passed u/s 148A(d) as well as notice was issued u/s. 148 were set aside and quashed. (AY. 2018-19)

Indus Towers Ltd. v. ITO (2022) 214 DTR 70 / 326 CTR 885 (Delhi)(HC)

S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Principle of natural justice-Granted three days to file reply-Order was quashed. [S. 148A(b) 148A(d), Art, 226]

The AO issued notice u/s 148A(b) to the Assessee on 25-3-2022 requiring to show cause on or before 28-03-2022 as to why notice u/s 148 should not be issued. The Assessee did not respond to the said notice. The AO passed order u/s 148A(d) on 31-03-2022 i.e. within seven days from the issue of notice u/s 148A(b). The Assessee filed a writ petition challenging such an order.

The High Court held that the legislature has stipulated mandatory timelines of a minimum of seven days and maximum of thirty days before order u/s 148A(d) can be passed. The Assessee was provided only three days to submit the response and hence order u/s. 148A(d) was quashed and set aside. The High Court also held that the defect committed by AO of giving less than seven days to the Assessee to reply to notice u/s. 148A(b) is curable and the AO can issue a fresh notice if permissible by law. (AY. 2018-19)

Jindal forgings v. Income-tax Department (2022) 216 DTR 449 / 143 taxmann.com 263 (Jharkhand)(HC)

S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Failure to issue proper show cause notice-Principle of natural justice-Order set aside [S. 148A(b),151, Art.226]

Allowing the petition the Court held that the assessee is entitled to a proper show cause notice and the order should be reasonable. The order was quashed and the matter was remanded to the Assessing Officer for passing fresh order. (AY. 2015-16) (SJ)

Sambathiraj Vijayrai v ITO (2022) 328 CTR 827 / 215 DTR 449 (Mad)(HC)

S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Third party Search-Provision of section 153C is applicable-Notice under section 148A is held to be bad in law-Remanded the matter back to the AO to pass a fresh reasoned order in accordance with the law. [S. 148, 148A(d), 153C, Art, 226]

The reassessment proceedings under section 148A were initiated on the basis of information received in a third-party search. On writ, the Counsel for the department admitted that the case was covered under section 153C of the Act. After analyzing section 148A the Court held that since the case falls under clause (c) of the proviso to section 148A, the impugned order and the notice issued under section 148A is bad in law and set aside the said impugned order and the notice and remanded the matter back to the AO to pass a fresh reasoned order in accordance with the law. (AY. 2018-19)

Pradeep Kumar Varshney v. ITO (2022) 214 DTR 74 / 326 CTR 882 (Delhi)(HC)

S. 148A: Reassessment-Conducting inquiry, providing opportunity before issuing of notice-Natural justice-Not considered the material available on record- passed order, needs to be set aside for consideration [S. 148,148(d) Art. 226]

Held that it is the mandate provision of statute under sub-clause (d) of S. 148A that the AO shall decide on the basis of material available on record including the reply of the assessee, as to whether or not it is a fit case to issue a notice u/s. 148, by passing an order, with the prior approval of Pr. CIT. AO without considering the reply/representation made had proceeded with a pre-determined mind. The direction was given to the AO to pass a fresh reasoned order in accordance with the law. (AY. 2018-19)

Lalit Kumar Poddar v. ITO (2022) 213 DTR 343 / 326 CTR 659 (Delhi)(HC)

S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Validity of notice-section 148A would not apply till limitation prescribed under section 148 does not lapse or expire-Notice was stayed-Matter was adjourned to 24-1-2022 [S. 132, 148,151, Art, 226]

Held that the notifications dt.27.02.2021 and 31.03.2021 issued by the CBDT, though extend the period of limitation in respect of issuance of notice u/s. 148 but the said notification has not empowered the CBDT to put into oblivion the provision of s. 148A of the Income Tax Act, which was inserted by virtue of the Finance Act, 2021 and was notified w.e.f. 01.04.2021, as if the said section 148A would not apply till the limitation prescribed under section 148 does not lapse or expire. Notice stayed and the matter was fixed for hearing on 24-1-2022 (WP)(C) / 6273 / 2021 dt.. 8-12 2021)

JSVM Plywood Industries Ltd. v. ACIT (2022) 209 DTR 166 / 324 CTR 228 (Gau)(HC)

S.148A: Reassessment Notice-show cause notice before passing the order-Petitioner within a period of four days submitted reply-the petitioner cannot challenge the notice on the ground that clear seven days' time was not afforded-Writ petition was dismissed. [S. 148, Art, 226]

Held that, on receipt of the notice, without any object or protest, the petitioner filed its reply on merit therefore, the petitioner cannot question the issuance of show cause notice alleging contravention of s. 148-A. The petitioner was bound by the principle of waiver having responded to the show cause notice with a detailed and voluminous reply to the show cause,

thus, after submission of the reply, cannot be alleged that the notice was against the provisions incorporated in S.148-A. The writ petition was dismissed.
Mathura Mercantile P. Ltd v. PCIT (2022) 213 DTR 433/ 326 CTR 606(MP)(HC)

S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Not all information in possession of the officer can be construed as information that qualifies for initiation of proceedings for reassessment, and it is only such information that suggests escapement and which, based upon the material in his possession-Agreement between doctors and hospital-remuneration paid for fixed amount along with components such as number of patients treated etc. (r.w.s.15, 17, 28(i))[S. 148, Art, 226]
Held that, not all information possessed by the revenue can be construed as information that qualifies for initiation of proceedings for reassessment, only such information that suggests escapement and which, based upon the material in his possession, that the officer decides as 'fit' to trigger reassessment that would qualify for initiation of reassessment proceedings. The 'information' in possession of the Revenue does not, in light of the settled legal position lead to the conclusion that doctors were getting salary from the hospital and were not merely acting as consultants and that there was escapement of tax, order set aside. (SJ) (WP No. 12692 of 1-9-2022)
Mathew Cherian (Dr.) v.ACIT (2022) 219 DTR 2/329 CTR 809(Mad)(HC)

S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Order passed under section 148A(d) is not a final adjudicating order but a preliminary order-Assesse is entitled to full opportunity to raise objections during the course of reassessment proceedings-Petition was dismissed as premature.[S. 148A(b), 148(a)(d), 149, Art, 226]

AO reopened the assessment and issued notice under section 148A(b) by wrongly treating the share allotment transaction in the Assessment Year, 2013-14, whereas the transaction took place in the Financial Year, 2011-12. Assessee filed its reply to the said notice as the same is time barred on the date of its issuance. Subsequently, 148A(d) order was passed. On writ the Court observed that the time limit specified under section 149 was only available in respect to notice under section 148 and not with respect to 148A proceedings. The Court therefore held that the 148A(d) order is a preliminary order and not a final adjudicating order, and hence, the assesse shall be given full opportunity to raise objections during the course of reassessment proceedings. Petition was dismissed as premature. (AY. 2013-14)
Sylph Technologies Ltd. v. PCIT (2022) 218 DTR 436/ 329 CTR 244 / 2023) 451 ITR 495 [1](MP)(HC)

S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Principles of natural justice-Assessee filed explanation to 148A(b) notice along with documents and sought time to file additional documents in support of the explanation-Time sought by the assesse was not granted and 148A(d) order was passed

[1]

denying filing of documents in response to 148A(b)-Matter remitted back [S. 148A(d), Art, 226]

The petitioner HUF had mistakenly furnished the individual PAN number at the time of opening the HUF current account and the AO issued 148A(b) notice alleging cash deposits had been made in the individual Bank Account. The petitioner filed reply clarifying the said mistake and explaining the deposits made into the HUF current account along with certain documentary evidences. The respondent passed 148A(d) order without providing sufficient time as requested by the petitioner to file further documentary evidences and without considering the earlier reply of the petitioner. The Court set aside the 148A(d) order and matter was remitted back with the direction to grant personal hearing, consider the explanation and the documentary evidences and also to consider the specific stand of the petitioner that individual PAN number was granted while opening the HUF account. (AY. 2015-16)

Thiyagarajan Venkatraman v. ITO (2022) 214 DTR 377/ 327 CTR 66 (Mad) (HC)

S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Show cause notice-Writ petition was dismissed. [S. 148, 148A(b) 148A(d), Art, 226]

The assessee had challenged 148A(d) order on ground that said order was passed on grounds which were beyond subject matter of show cause notice issued under section 148A(b), the Court held that as impugned order is at a stage prior to issuance of 148 notice, and unless conditions precedent to invoke the power to reopen assessment had been violated, a Court cannot interfere with preliminary 148A(d) order. The Court also held that the assessee could raise said contentions in reply to 148 notice and thus, no interference would be warranted at this stage. (AY.2015-16)

Yellaiah Setty v. ACIT (2022) 327 CTR 600/ 143 taxmann.com 326/ 216 DTR 128 (Telangana) (HC)

S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Non-sharing of material information on the basis of which reassessment proceedings are undertaken isviolative of the Act and denies an effective opportunity to the assessee to file a response to the same [S. 148, 148A(b), 148A(d),Art, 226]

Reassessment proceedings were initiated in assessee's case on the basis of Investigation Wing's report that the assessee had received cheques from Mr. Hasmukh Mehta amounting to Rs. 1,72,00,000 which was not a genuine business transaction as the entities from whom the funds were received were not doing any business and were paper concerns which were engaged in only providing accommodation entries. Assessee filed a writ petition challenging the order passed under section 148A(d) and the notice issued under section 148 of the Act and stated that the assessee never had any alleged transactions with Mr. Hasmukh Mehta and that the material forming the basis of such allegation was not provided. High Court observed that the AO had not shared the material information in the show cause notice issued under section 148A(b) of the Act or in the order passed under section 148A(d) of the Act despite a specific request by the assessee. High Court held that the assessee was denied an effective opportunity to file a response and non-sharing of information was violative of the decision in Sabh Infrastructure Ltd. v. ACIT(2017) 398 ITR 198(Delhi)(HC). High Court set aside the order u/s. 148A(d) and the notice issued u/s. 148 and remanded the matter back to the AO for a fresh determination. (AY. 2014-15)

Aryan Management Service (P) Ltd. v ITO (2022) 217 DTR 438 / 328 CTR 728 (Delhi)(HC)

S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Failure to consider the reply of the assessee-Order was quashed and matter was to be remanded back to Assessing Officer with a direction to decide notice under section 148A(b) by passing a reasoned order in accordance with law, after taking into account reply filed by assessee. [S. 148A(c), 148A(d), Art, 226]

On writ the Court held section 148A(c) casts a duty on Assessing Officer, to consider reply of assessee in response to notice under section 148A(b) before making an order under section 148A(d) of the Act. On facts the order was passed under section 148A(d) had been passed after receipt of detailed reply by assessee, however, Assessing Officer had not considered reply of assessee, mandate of section 148A(c) had been violated. Therefore the order under section 148A(d) and notice under section 148 were to be quashed and matter was to be remanded back to Assessing Officer with a direction to decide notice under section 148A(b) by passing a reasoned order in accordance with law, after taking into account reply filed by assessee. (AY. 2018-19)

Hardev Singh v. ITO (2022) 214 DTR 146 / 326 CTR 875 / 140 taxmann.com 67 (Delhi)(HC)

S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Objection was not considered-AO was required to pass final order under section 148A(d) after taking into consideration said objections-Matter remanded.[S. 148,148A(b), 148A(d), Art, 226]

Assessee was issued show cause notice under section 148A(b) on ground that assessee failed to show certain bank transactions in its return for relevant assessment year..Assessee filed a detailed reply in form of objections in response to show cause notice.Assessing Officer passed final order under section 148A(d) and issued reopening notice under section 148. On writ the Court held that there is an obligation cast upon Assessing Officer in accordance with clause (d) of section 148A to consider case not only on basis of materials available on record, but also reply of assessee. Since assessee offered his reply by way of objections and Assessing Officer failed to take into consideration said reply, impugned order passed under section 148A(d) was to be quashed and matter was to be remanded for fresh consideration. Matter remanded. (AY. 2018-19)

Shrenik Sudhir Vimawala v. ACIT (2022) 215 DTR 57 /327CTR 129 / 140 taxmann.com 236 (Guj)(HC)

S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Order passed on grounds which are beyond subject matter of show cause notice-Writ petition was dismissed [S. 148, 148A((b), 148A(d), Art, 226]

In response to show cause notice for reassessment notice the assessee submitted the reply. The Assessing Officer passed order under section 148A(d) observing that case of assessee

was fit for issuance of reopening notice. Assessee challenged the order on ground that Assessing Officer had issued reopening notice based on reason which was beyond subject matter of show cause notice under section 148A(b) of the Act. Dismissing the petition the Court held that since order under section 148A(d) is at a stage prior to issuance of notice under section 148, and unless glaring omissions are demonstrated or conditions precedent for exercise of power to reopen assessment are not complied with, a writ Court would not ordinarily interfere with an order passed under section 148A(d) inasmuch as proceedings is at a very nascent stage even prior to issuance of statutory notice under section 148 of the Act.(AY. 2015-16)

Yellaiah Setty v. ACIT (2022) 216 DTR 128 / 143 taxmann.com 326/ 327 CTR 600 (Telengana)(HC)

S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Amalgamation-Appeal pending before DRP-Notice of reassessment is bad in law [S. 148, Art, 226]

Assessing Officer issued notice under section 148A(b) in name of company, which stood amalgamated with petitioner-company. The petitioner informed the Revenue about the Amalgamation Assessing Officer issued reopening notice in name of petitioner-company with PAN of company, B. On writ allowing the petition the court held that since assessment of petitioner-company for relevant assessment year was pending adjudication before DRP, notice of reassessment is bad in law. (AY. 2018-19)

DCM Shriam Ltd. v. ACIT (2022) 218 DTR 217 / 139 taxmann.com 405 (Delhi)(HC)

S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Beneficiary of accommodation entries-Transaction in the course of business-Writ petition was dismissed [S. 148, 149, Art, 226]

A show cause notice was issued upon assessee to provide information regarding accommodation entries received by it from an entity, namely, STC After no reply was received, another notice was issued under section 148A(b) and reassessment proceeding was initiated. Assessee filed a writ petition against same and it was contended that said transaction was done in course of business.. Dismissing the petition the court held that petition to determine disputed facts was not maintainable at this interim stage of reassessment proceedings. (AY. 2013-14)

North End Foods marketing(P) Ltd. v. Dy. CIT (2022) 220 DTR 68 / 329 CTR 788 / (2023) 146 taxmann.com 67 (Delhi)(HC)

S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Natural justice-Only three days' time was given-Defect committed by revenue was a curable defect and if law permits, revenue can issue fresh letter to assessee in continuation to notice issued under section 148A(b) by giving him at least seven days' time.[S. 148, 148A(b). 148A(d), Art, 226]

Notice under section 148A(b) was issued on 25-3-2022 and assessee was directed to compliance on or before 28-3-2022. The Assessing Officer on 31-3-2022 passed order under section 148A(d) and issued reopening notice.The assessee challenged the said order by filing writ petition. The Revenue claimed that though only three days' time was given to assessee to

file its reply but order was passed on seventh day as assessee did not file any reply. Allowing the petition the Court held that since legislature had categorically stipulated mandatory timeline of minimum seven days and maximum thirty days to be given to assessee before order under section 148A(d) could be passed for reassessment proceeding order and reopening notice was quashed Since defect committed by revenue was a curable defect and if law permits, revenue can issue fresh letter to assessee in continuation to notice issued under section 148A(b) by giving him at least seven days' time. (AY. 2018-19)

Jindal Forgings v. PCIT (2022) 328 CTR 239 /216 DTR 449 / 143 taxmann.com 263 (Jharkhand)(HC)

S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Fake invoices-Input credit-Unexplained expenditure-Reassessment notice is held to be valid [S. 69C, 143(3) 148, Art, 226]

Reopening notice was issued on ground that an information was received that a company, namely, Panveen Trading Pvt Ltd was indulging in generating and selling fake invoices to various entities without physical supply of underlying goods/services for passing regular input tax credit to other business entities and that assessee was also a beneficiary of such transaction. Assessee filed writ petition contending that it did not enter into any purchase or sale transaction with any such entities and it had also not claimed any input tax credit with respect to goods and service tax purportedly paid by said entities, thus, there was no question of escapement of income chargeable to tax by making claim of bogus expenditure in terms of bogus purchases. Dismissing the petition the Court held that grounds which was taken by assessee in writ petition was his defence that could not be examined at stage of issuance of notice under section 148 as Assessing Authority before issuance of reopening notice had relied upon credible information which in impugned notice had already been furnished and thereafter considering such information it had recorded a finding that it was a fit case where notice under section 148 could be issued.The Court also observed that the assessee was unable to point out that findings which was recorded by Assessing Authority were contrary to material on record and Assessing Authority had not applied its mind or Assessing Authority had not considered reply filed by assessee.(AY. 2018-19)

Barbrik Projects Ltd.v.UOI (2022) 289 Taxman 534/ (2023) 330 ITR 23 (Chhattisgarh)(HC)

Editorial : Affirmed by division Bench,Barbrik Projects Ltd.v.UOI (2023) 330 CTR 6 ((Chhattisgarh)(HC)

S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Violation of principle of natural justice-Order passed without granting adequate time to fie reply-Order was set aside-Matter was to be remanded back to Assessing Officer for decision fresh. [S. 148, 148A(d), Art, 226]

Show cause notice under section 148A(b) was issued to assessee on 18-5-2022.Assessee asked for material relied upon vide letter dated 1-6-2022. However, material forming basis of allegation of escapement of income was served on assessee only on 19-7-2022 with a direction to respond by 21-7-2022. Assessee filed its reply on 26-7-2022.Assessing Officer passed the order under section 148A(d) and notice under section 148 both dated 29-7-2022. On writ allowing the petition the Court held that the assessee has a right to get adequate time under section 148A to respond to show cause notice. Section 148A(b) permits Assessing Officer to suo motu provide up to thirty days' period to an assessee to respond to show cause notice issued under section 148A(b), which period may in fact be further extended upon an application made by assessee in this behalf. Accordingly the order and notice under section 148, both were to be set aside and matter was to be remanded back to Assessing Officer for a fresh decision after considering reply dated 26-7-2022 filed by assessee.(AY. 2017-18)

Bird Worldwide Flight Services (I.) (P.) Ltd. v. DCIT (2022) 289 Taxman 652 (Delhi)(HC)

S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Opportunity of hearing-Invested in penny scrips of two companies-A notice even if stated to be under section 148A(b) would be treated as a notice of enquiry under section 148A(a) if it contained questionnaire instead of information-Matter remanded. [S. 69, 148A(b), Art, 226]

Assessing Officer issued a notice under section 148A on ground that assessee had allegedly invested in penny scrips of two companies and had received certain amount from a bogus company. During e-proceedings, assessee submitted its response and requested for providing copies of adverse materials and statements found on basis of which notice under section 148A was issued. It further sought for an opportunity to cross examine person who might have given such adverse deposition and also requested for a copy of approval of specified authority before issuance of said notice. Despite consistently reiterating this request, revenue failed to give any response. On writ single judge dismissed the petition. On appeal the Division Bench held that notice claimed to be issued under clause (b) of section 148A did not contain any information regarding reason for reopening but contained a questionnaire, thus, notice was deemed to be a notice under clause (a) of section 148A of the Act. On facts there was a gross procedural error from very inception of proceedings and thus order passed under clause (d) of section 148A was bad in law and set aside. Matter was remanded back to Assessing Officer with direction to furnish full information as sought for by assessee and thereafter conduct an enquiry as provided for under clause (a) under section 148(A) and accordingly proceed in accordance with law. (AY. 2018-19)

Swal Ltd.v.UOI (2022) 289 Taxman 246/ 217 DTR 287/ 328 CTR 370/(2023) 450 ITR 148 (Cal)(HC)

Editorial : Decision of single judge reversed,Swal Ltd. v UOI (2022) 217 DTR 286 (Cal) (HC) / 328 CTR 369 (Cal)(HC)

S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Survey-Bogus share capital-Share premium-Reopening notice issued on 20-7-2022-income alleged to have escaped more than Rs. 50 lakhs-Reopening notice was not time barred [S. 68, 133A, 148, 149(1)(b), Art, 226]

During survey conducted by Investigation Wing at premises of assessee and its group companies, it was noticed that its group companies were engaged in unaccounted cash transactions and provided bogus share capital and share premium to other companies Assessing Officer on perusal of investigation report concluded that transfer of shares carried out by assessee was of inconsistent value and required examination. He passed an order under section 148A(d) and issued reopening notice on 20-7-2022. The assessee filed writ petition challenging the said notice on ground that same was time barred. Dismissing the petition the Court held that on the facts of the case initial reopening notice issued on 29-6-2021 which was earlier quashed, stood revived by decision of Supreme Court in UOI v. Ashish Agarwal (2021) 444 ITR 1 (SC) wherein it was held that reopening notices issued under unamended section 148 between 1-4-2021 and 30-6-2021 will be deemed to be issued under section 148A, thus, first proviso to section 149 would not be attracted.Since income alleged to have escaped being more than Rs. 50 lakhs, section 149(1)(b) was satisfied and, thus, impugned reopening notice issued was not time barred. (AY. 2013-14)
Touchstone Holdings (P.) Ltd. v.ITO (2022) 289 Taxman 462/ 218 DTR 241/ 329 CTR 231/ (2023)451 ITR 196 (Delhi)(HC)

S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Unexplained investments-Shares-SEBI registered broker-Information was not reported by the Assessing Officer of Vishesht Financial Services Pvt Ltd (VFSPL) to assessee's Assessing Officer-Notice was set aside and matter was to be remanded to Assessing Officer to pass a fresh order-Matter remanded [S. 69, 147, 148, 148A(d), Art, 226]

Assessee, a SEBI registered broker, was issued notice under section 148A(b) of the Act. Notice was issued on basis of assessment proceedings of one Vishesht Financial Services Pvt Ltd (VFSPL) wherein it was observed that Vishesht Financial Services Pvt Ltd (VFSPL) could not provide PAN/GSTIN of entities in whose scrips it traded through assessee-broker. Assessing Officer passed order under section 148A(d) and issued reopening notice on ground that no details regarding said transactions were found to be declared in assessee's return, thus, same had resulted in escapement of income. On writ, it was contended that scrutiny assessment of VFSPL was concluded even prior to issuance of notice under section 148A(d) to assessee and assessment order in case of VFSPL was passed without making any additions. Court held that since said information was not reported by VFSPL's Assessing Officer to assessee's Assessing Officer, reopening notice was to be set aside and matter was to be remanded to Assessing Officer to pass a fresh order under section 148A(d). Matter was remanded. (AY. 2018-19)
South Asian Stocks Ltd. v. ACIT (2022) 289 Taxman 33 (Delhi)(HC)

S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Reason given for notice-Existence of alternate remedy-Writ is not maintainable.[S. 148A(b), 148(d), Art, 226]

The petitioner challenged the order passed under section 148A(d) of the Act, on the ground that the order was passed without considering the objections raised by the petitioner. Dismissing the petition the Court held that for rectification of errors statutory remedy has been provided. The reasons assigned by the Assessing Officer to tentatively believe that taxable income has escaped assessment cannot be brushed aside at the threshold without a fact-finding procedure, especially when the petitioners are not remediless and have got equally efficacious recourses under the Act. Court held that where the proceedings have not even been concluded by the statutory authority, the writ court should not interfere at such a premature stage.(AY.2018-19)

Anshul Jain v. PCIT (2022)449 ITR 251/ 142 taxmann.com 185 (P&H)(HC)

Editorial: SLP dismissed, Anshul Jain v. PCIT (2022) 449 ITR 256/329 CTR 463/ 219 DTR 169/ 289 Taxman 239 (SC)

S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Violation of principles of natural justice-Personal hearing-Reassessment notice was quashed-Directed to pass the order after considering the documents and giving an opportunity of hearing. [147, 148, 148A(b),148A(d),Art,226]

The assessee had not been furnished the full information based on which the reopening proceedings under section 147 of the Income-tax Act, 1961 were proposed. On writ the Court held that there is violation of principle of natural justice. The Assessing Officer had considered the reply given by the assessee but thereafter passed an order in the remaining paragraphs which were not explicitly stated in the reasons for reopening according to the annexure to the notice under section 148A(b). The Court held that the order passed under section 148A(d) should be reckoned as reasons for reopening and the assessee was to file an objection and also enclose all documents in support of the claim and thereafter the Assessing Officer should consider the reply and documents and afford an opportunity of personal hearing to the assessee. (AY.2018-19)

Babcock Borsig Ltd. v. UOI (2022)449 ITR 613 (Cal)(HC)

S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Intimation-Fresh material not necessary for reopening assessment-Order passed under section 148A(d) and notice issued under section 148 is held to be valid. [S. 143(1) 147, 148, 148A(d), Art, 226]

The show cause notice was issued to reopen the assessment on the ground that the assessee ‘s return of income did not offer to tax receipts of professional service charges from S.R. Botliboi and Associates LLP. The petitioner challenged the order passed under section 148A(d) and notice issued under section 148 of the Act.Dismissing the petition the Court held that there was no infirmity in the order passed by the Assessing Officer under section 148A(d) for issue of notice under section 148 of the Act. Court also held that when the original assessment proceeding has been completed under section 143(1) of the Income-tax Act, 1961, there is no need for fresh tangible material for reopening the assessment under section 147 since there is a distinction between “intimation” and “assessment” under section 143(1) and 143(3). Consequently, the order passed under section 143(1) is not an

assessment for the purposes of section 147 and therefore, it is not necessary for the Assessing Officer to come across some fresh tangible material to form a belief that income has escaped assessment.(AY.2018-19)

Ernst and Young U. S. LLP v. ACIT (IT) (2022)449 ITR 425 (Delhi)(HC)
Editorial: SLP of assessee dismissed, Ernst and Young U. S. LLP v. ACIT (IT)(2022) 449 ITR 3 (SC)(St)

S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Failure to grant minimum seven days' time to respond to notice-Demand not raised and final assessment order was not passed-Writ petition was dismissed.[147, 148, 148A(b), 148A(d), Art, 226]
Against the order passed under section 148A(d) of the Act, the assessee filed a writ petition contending that the statutorily prescribed seven days time was not given and that no opportunity of hearing was given. Dismissing the petition the Court held that the rejection of the assessee's objection to the notice under section 148A(b) did not mean that any final reassessment order had been passed and demand had been raised. The assessee would have opportunity during the reassessment proceedings under section 147 to establish his case and to make out a case for dropping the reassessment proceedings. It could not be called a case of violation of principles of natural justice.(AY.2018-19)(SJ)

Girdhar Gopal Dalmia v. UOI (2022)449 ITR 629 (Cal)(HC)
Editorial: Order of single judge Girdhar Gopal Dalmia v. UOI (2023) 450 ITR 143 (Cal)(HC), reversed.

S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Natural justice-Additional time was not provided for submitting the reply-Notice set aside-Matter remanded [S.148, 148A(b), 148(d), Art, 226]

Writ petition was filed against the issue of notice on the ground that sufficient time was not granted for responding the notice. Allowing the petition High Court aside the order under section 148A(d) and the consequential notice under section 148 and remanded the matter to the Assessing Officer to consider the assessee's objections in accordance with law.

Interglobe Aviation Ltd. v.ACIT (2022)449 ITR 616 (Delhi)(HC)

S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Limitation-Order for issue of notice after six years-Barred by limitation-Order was quashed [S. 147, 148, 148A(d), Art, 226]

The assessee filed the writ petition challenging the order passed under section 148A(d) is beyond limitation. Allowing the petition the Court held that the order under section 148A(d) of the Income-tax Act, 1961 dated July 29, 2022, relating to the assessment year 2014-15 on the ground that it was without jurisdiction and barred by limitation since the reopening of the assessment had been made admittedly after six years from the end of the expiry of the period of the relevant assessment year.(AY.2014-15) (SJ)

Ved Prakash Mittal v. UOI (2022) 449 ITR 321 (Cal)(HC)

S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Natural justice-Period granted was less than seven days-Responded the notice-Amount in dispute less than 50 lakhs-Notice issued beyond three years-Notice and order was quashed and set aside.[S. 148, 148A(d), 149(1)(b), Art, 226]

The petitioner challenged the order passed under section 148A(d) of the Act.The notice under Section 148 A(b) dated 23.03. 2022 grants time to the petitioner to respond to the same by 29.03. 2022. The period as granted is less than seven days as prescribed by Section 148A(b) of the Act of 1961. The petitioner has responded to the notice by his reply dated 29.03. 2022. As regards deposit of cash of Rs.16,20,000/-is concerned, the petitioner had sought disclosure of the material or the source of information on the basis of which such notice was issued. The petitioner denied having deposited the aforesaid amount in his bank account. The material/source of information was not supplied to the petitioner. Even if the amount of Rs.40,00,000/-as mentioned in the notice dated 23.03. 2022 is excluded from consideration for the reason that the petitioner is not the purchaser of the property in question, the amount remaining for consideration is Rs.20,71,500/-and Rs.16,20,000/-thus totalling Rs.36,91,500/-. In this regard, if the provisions of Section 149(1)(b) of the Act of 1961 are considered, it is seen that only if the amount in question that is likely to have escaped assessment is Rs.50,00,000/-or more, the time limit for issuing notice to re-open the assessment is three years but less than ten years. Thus if the income that is likely to escape assessment is only Rs.36,91,500/-after excluding the amount of Rs.40,00,000/-, it is clear that the proceedings are not liable to be re-opened as the amount involved is less than the one contemplated under Section 149(1)(b) of the Act of 1961 and the same pertains to Assessment Year 2015-16. The notice under Section 148(b) is dated 23.03. 2022 which is beyond the permissible period of three years. Court also held that it would be futile to require the petitioner to face proceedings under Section 148 of the Act of 1961. The material on record that was placed before the Assessing Officer warranted consideration especially in the light of the fact that the document relied was a registered sale deed. If the amount of Rs.40,00,000/-mentioned therein is excluded from consideration, the notice as issued on 23.03. 2022 falls foul of the provisions of Section 149(1)(b) of the Act of 1961. Hence for this reason, court did not find that the petitioner should be required to further contest the proceedings under Section 148 of the Act of 1961. The order dated 31.03. 2022 passed under Section 148 A(d) of the Income Tax Act, 1961 as well as notice dated 31.03. 2022 issued under Section 148 of the Act of 1961 are quashed and set aside. (AY. 2015-16)

Naresh Balchandrarao Shinde v. ITO(2022) 220 DTR 401/ 330 CTR 449 / (2023)451 ITR 149/ 330 CTR 449 (Bom)(HC)

S.148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Response filed to notice not considered-Proceedings not concluded-Interim stage-Writ petition was dismissed [S. 148A(b), 148A(d), Art, 226, 227]

Assessee, a partnership firm, received notice under section 148A(b)-Details of information and enquiry on basis of issuance of notice were supplied to assessee along with said notice. Assessee raised objections which were decided vide order passed under section 148A(d). Assessee filed writ petition challenged notice under section 148A(b) and order passed under section 148A(d) on ground that stand of assessee had not been taken into consideration resulting in miscarriage of justice. Dismissing the petition the Court held that at stage where proceedings had not even been concluded by statutory authority, writ Court could not have interfered at such pre-mature stage. Therefore, when proceedings initiated were yet to be concluded by a Assessing authority, interference by High Court in exercise of jurisdiction under article 226/227 of Constitution at this intermediate stage was not warranted. (AY. 2018-19)

FTC Overseas v. CBDT (2022) 288 Taxman 321 (P & H)(HC)

S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Reassessment proceeding was at its intermediate stage and was yet to be concluded by statutory authority-Writ petition was dismissed.[S. 148, Art, 226, 227]

Assessing Officer issued a reopening notice under section 148 of the Act. While reassessment proceedings were in process, assessee filed a writ petition against said reopening of assessment. Dismissing the petition the court held that reassessment proceeding was at its intermediate stage and was yet to be concluded by statutory authority. (AY. 2018-19)

Gian Castings (P) Ltd v. CBDT (2022) 140 taxmann.com 318 (P& H)(HC)
Editorial: SLP of assessee dismissed, Gian Castings (P) Ltd v. CBDT (2022) 288 Taxman 167 (SC)

S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Unexplained expenditure-Bogus purchase-Non supply of clear and legible copies-Cannot be adjudicated in the writ proceedings-Three working days to file reply-Natural justice not violated-Writ petition was dismissed [S. 148, 148(d), Art, 226]

The reassessment notice was issued to the assessee. The Assessee filed a petition seeking to quash the order and notice issued on ground that said order was passed by relying on completely ineligible and unreadable documents and without granting sufficient time to respond to notice was in violation to principle of natural justice. Dismissing the petition the Court held that the Revenue had furnished legible copies of documents based on which reopening was initiated to assessee at initial stage itself.The reassessment notice was issued on the basis of one of alleged supplier of assessee had made a statement that he had not carried out transactions with assessee which were appearing in his bank account. High Court held that in view of testimony of supplier a prima facie case of escapement of income was made out and, thus, matter was to be proceeded further and Assessing Officer was to decide matter on its own merits. Court observed that " It is settled law that 'principle of natural justice is no unruly horse and no lurking land mine' as held by Mr. Justice Krishna Iyer

in Chairman, Board of Mining Exam & Chief Inspector of Mines v. Ramjee [1977] 2 SCC 256. In fact, in S.Tikara v. State of M.P. AIR 1997 SC 1691, it has been held that the principles of natural justice cannot be petrified or fitted into rigid moulds. They are flexible and turn on the facts and circumstances of each case. Consequently, the questions that arise are whether there has been any unfair deal by the respondent?" (AY. 2013-14)

Indure (P.) Ltd. v. PCIT (2022) 142 taxmann.com 66/ 216 DTR 233 / 327 CTR 761 (Delhi)(HC)

Editorial: SLP of assessee dismissed, Indure (P.) Ltd. v. PCIT (2022) 288 Taxman 721 (SC)

S.148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Response to show cause notice was not considered-No jurisdiction error-Writ petition was dismissed [S. 148, 148A(d), Art, 226, 227]

Assessee challenged order passed under section 148A(d) and consequential notice issued under section 148 on ground that order under section 148A(d) had been passed without considering reply filed by assessee raising objections to notice issued to assessee under section 148A(b). Dismissing the petition the Court held there is vexed distinction between jurisdictional error and error of law/fact within jurisdiction and for rectification of errors statutory remedy has been provided. On facts when proceedings initiated were yet to be concluded by a statutory authority, interference by High Court in exercise of jurisdiction under article 226/227 of Constitution at this intermediate stage was not warranted. (AY. 2018-19)

Krishana Goel v. PCIT (2022) 288 Taxman 213 (P& H)(HC)

S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Failure to consider the submission-Proceedings not concluded-Writ petition was dismissed [S. 148, 148A(b), 148A(d),Art, 226, 227]

Assessee filed writ petition challenged order passed under section 148A(d) along with notice issued under section 148 on ground that response filed by assessee to notice under section 148A(b) had not been considered. Dismissing the petition the Court held that proceedings initiated were yet to be concluded by a Assessing authority exercise of jurisdiction under article 226/227 of Constitution at this intermediate stage was not warranted.(AY. 2018-19)

Red Chilli International Sales v. ITO (2022) 288 Taxman 107 (P& H)(HC)

S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Long term capital gain-Verified in the original assessment proceedings-Reopening notice and reassessment order is set aside and remanded back for fresh consideration. [S. 45, 147 148, Art, 226]

Reassessment notice was issued on the ground that the assessee had not disclosed sale of a property and long term gain in its ITR filed. In the course of original assessment proceedings the Assessing Officer deliberated and verified the claim of capital gains. On writ allowing the petition the Court quashed the reopening notice and reassessment order and remanded back for fresh consideration. (AY. 2013-14)

Seema Gupta v. ITO (2022) 288 Taxman 519 (Delhi)(HC)

S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Natural justice-Period of 7 days was to be granted to assessee to file reply [S. 147, 148, Art, 226]

Assessees were issued notices under section 148A on 25-3-2022, requiring them to show cause by 1-4-2022 as to why reassessment proceedings should not be initiated against them. On writ allowing the petition the Court held that the assessees have a statutory right to reply to show cause notices issued under section 148A within 7 days of its receipt, hence, assessees were to be given 7 days to reply to show cause notice. Fresh decision was to be taken thereafter in accordance with law. (SJ)

Shini Satheeshkumar v. ITO (2022) 288 Taxman 548 (Ker)(HC)

S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Submitted a reply along with some documentary evidence showing that there was no escapement of income-Assessing Officer ought to have considered material produced on record by assessee-Matter is remitted back to Assessing Officer to give an opportunity of hearing and thereafter pass a detailed order.[S. 148, 189, Art, 226]

Assessee was an ex-partner of a partnership firm consisting of two individuals. Said firm was dissolved and entire business lock, stock and barrel was taken over by one of its partner having a different PAN Number. Since firm was dissolved and was not carrying business, there was no taxable income during assessment year 2018-19 and thus, its return of income for assessment year 2018-19 had not been filed. Show-cause notice under section 148A(b) was issued asking assessee to show cause as to why a notice under section 148 should not be issued. Assessee filed reply and in reply disclosed about dissolution of partnership firm clarifying that PAN Number which was allotted to partnership firm continued in bank account till 2021. Thereafter order under section 148A(d) was issued for reopening of assessment of assessee for assessment year 2018-19. On writ the Court held that since in compliance of notices under section 148A(b), assessee had submitted a reply along with some documentary evidence showing that there was no escapement of income, respondent Authority before passing impugned order ought to have considered material produced on record by assessee Since respondent Authority had not examined details supplied by assessee order was quashed and set aside and matter was remitted back to respondent Authority for adjudication afresh. (AY.2018-19)

Studio Virtues v. ITO (2022) 288 Taxman 62 / 220 DTR 44 / 329 CTR 660 (Guj)(HC)

S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Notice dated 31-3-2021, signed and issued on 31-3-2021-Alternative remedy-Writ petition dismissed [S. 143(3), 147,148, Art, 226]

Reassessment notices dated 31-3-2021 were issued under unamended section 148 Assessment order was passed consequent thereto on 29-3-2022.As per assessee in both cases, notices were communicated on 6-4-2021 and 10-4-2021 respectively i.e. after 31-3-2021, hence, impugned notice under unamended section 148 was bad in law in view of amendment carried out by Finance Act, 2021 bringing into force section 148A which requires a preliminary enquiry before initiating reassessment proceedings and since impugned notice was bad in law, any assessment undertaken thereunder would necessarily be without jurisdiction and void. On writ the Court held that there was nothing on record to show that they were issued after 31-3-2021 and on contrary, assessment order as also impugned notices themselves showed that they were signed and issued on 31-3-2021.Hence plea of assessee

was not sustainable. Since assessment proceedings having been concluded pursuant to notice dated 31-3-2021 issued upon assessee, assessee should avail alternative remedy of appeal.
Tanuja Singh v. UOI (2022) 288 Taxman 171 (Jharkhand)(HC)

S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Natural justice-Opportunity of hearing was not given-Order was set aside and matter remanded back to consider case a fresh.[S. 147, 148, 148A(b), 148A(d), Art, 226]

Order was passed without giving an opportunity of personal hearing. On writ allowing the petition the Court held that there was no material on record to show that assessee had been given an opportunity of being heard which was mandatory as per section 148A(b) before passing of impugned order under section 148A(d). Accordingly the order and notice under section 148 was set aside and matter was remanded back to revenue to consider case of assessee afresh after giving an opportunity of being heard. (AY. 2018-19)(SJ)
Zoomcar India (P) Ltd v. UOI (2022) 288 Taxman 761 (Karn)(HC)

S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Transactions of purchase and sale of shares-Notice under Section 148A(d) issued on different ground as reasons in 148A(b)-If Foundational allegation is missing in the notice issued under Section 148A(b)-Same cannot be incorporated by Issuing supplementary notice-Notice was quashed [S. 147, 147, 148A(b), 148A(d), Art, 226]

The show cause notice was issued under Section 148A(b) of the Act to the Petitioner and did not contain any allegation of escapement of income nor was the petitioner ever asked to explain the source of funds as alleged in notice issued under Section 148A(d). However, the Impugned order was passed on a completely different ground altogether. On writ allowing the petition the Court held that if the foundational allegation is missing in the notice issued under Section 148A(b) of the Act, the same cannot be incorporated by issuing a supplementary notice. The show cause notice issued under Section 148A(b) of the Act as well as the order passed under Section 148A(d) of the Act and the notice issued under Section 148 of the Act for the assessment year 2018-19 are quashed. Liberty granted to Respondents/Revenue to take further steps in the matter if the law so permits. If and when such steps are taken and if the Petitioner has a grievance, it shall be at liberty to take its remedies in accordance with law. Mahasthan DI Hati Pvt Ltd v. Dy.CIT (2022)) 448 ITR 667 (Delhi)(HC), distinguished. (AY. 2018-19)

Catchy Prop-Build Pvt Ltd v. ACIT (2022) 448 ITR 671 (Delhi)(HC)

S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-High-Pitched Assessments-Violation of principle of natural justice-Non application of mind-Gross negligence-Order was quashed-The action taken by the Department in terms of the instructions read with the affidavit referred to in the court's order dated May 19, 2022 was to be communicated to the assessee by the Department and a compliance report was to be submitted before the court[S. 147, 148A(d) Art, 226]

Allowing the petition the Court held that prima facie, the order passed under section 148A(d) was patently erroneous and grossly illegal, reflecting abuse of power and attracted the circular issued by the Central Board of Direct Taxes in Instruction F. No. 225/101/2021/-ITA-II, dated April 25, 2022 and required action. Such instruction also provides for initiation of suitable administrative action against the erring officer in cases where the assessments are found by the local committee to be high-pitched or where there is non-observance of principles of natural justice, non-application of mind or gross negligence by the Assessing Officer or assessment unit. The Department was to ensure that appropriate proceedings in accordance with law were initiated against the erring officers. The order passed under section 148A(d) and the consequent notice issued under section 148 for the assessment year 2018-19 by the assessing authority were quashed. The action taken by the Department in terms of the instructions read with the affidavit referred to in the court's order dated May 19, 2022 was to be communicated to the assessee by the Department and a compliance report was to be submitted before the court. Placed on July 12, 2022. Referred Harish Chandra Bhatti v.PCIT (2022) 447 ITR 585 (All)(HC) (AY.2018-19)

Dharmendra Kumar Singh v. UOI (2022)448 ITR 313/ 215 DTR 93 /327 CTR 276 (All)(HC)

S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Bogus entities-Vague show cause notice-Matter remanded to issue supplementary notice furnishing details [S. 148A(b) 148A(d), Art, 226]

Allowing the petition the Court held, that since the show-cause notice issued under section 148A(b) and the subsequent notice were bereft of any details, the Department's asking the assessee to respond to the vague show-cause notice was virtually asking the assessee to search for "a needle in a haystack". However, since it was stated that the Department would supply all the relevant material documents and information in its possession, the order passed under section 148A(d) and the notice issued under section 148 were to be set aside with a direction to the Department to issue a supplementary notice in pursuance of the initial notice issued under section 148A(b) enclosing all the relevant or incriminating information or material or documents. The assessee should file its response to the supplementary notice. The Assessing Officer was directed to pass a fresh order under section 148A(d) in accordance with law.(AY.2015-16)

Mahashian Di Hatti Pvt. Ltd. v. Dy. CIT (2022)448 ITR 667 / 328 CTR 731 / 218 DTR 35 (Delhi)(HC)

S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Issuing third notice and furnishing specific details of transaction which was subject matter of earlier notice-Failure to explain or substantiate genuineness of transaction in reply-Notice and order for issuance of reassessment notice valid.[S. 147, 148, 148A(d), Art, 226]

Dismissing the petition the Court held that in the absence of any explanation for the transactions entered into with the entity in the relevant financial year having been offered by the assessee in her reply to the notice dated June 23, 2022, there was no error in the order passed by the Assessing Officer. When the assessee in her detailed reply on June 28, 2022 had elected not to explain or substantiate the transaction with the entity could not contend that she was denied an opportunity of hearing. The assessee's contention that the transaction was a loan transaction and it was repaid could be examined by the Assessing Officer in the assessment proceedings after examining the material furnished by the assessee. Consequently, there was no infirmity in the notice dated June 23, 2022 and the order passed under section 148A(d) by the Assessing Officer.(AY.2013-14)

Saroj Chandna v. ITO (2022)448 ITR 28 / 218 DTR 41/328 CTR 804(Delhi)(HC)

S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Firm dissolved-Department is intimated-Transaction recorded in proprietorship concern-Matter remanded for fresh consideration [S. 148, 148A(b) 148A(d), Art, 226]

The assessee filed the writ petition challenging the notice issued u/s 148, 148A(b) and order passed 148A(d) of the Act on the ground that the petitioner has informed the Department the dissolution of firm and the firm was taken over by Mr. Sanjay Gupta as the sole proprietor. High Court remanded the matter for fresh consideration and directed the AO to pass fresh order within a period of four weeks. (W.P.(C) 13712/2022 dt. 22-9-2022)(AY. 2015-16, 2017-18, 2018-19)

Sanjay Gupta v. UOI (2023) 146 taxmann.com 163 (Delhi)(HC)

S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Reassessment notice issued under section 148 on 30-6-2021 without complying with substituted provisions of section 148A was quashed [S. 148 Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 S. 3]

Court held thatheld that virtue of Finance Act, 2021 provisions of sections 147 and 148 as existed upto 31-3-2021, stood substituted along with new provisions enacted by way of section 148A and in absence of any saving clause to save pre-existing provisions, revenue could only initiate reassessment proceedings on or after 1-4-2021 in accordance with substituted law. Accordingly reassessment notice issued under section 148 on 30-6-2021

without complying with substituted provisions of section 148A was quashed. Followed Ashok Kumar Agarwal v.UOI (2021) 131 taxmann.com 22 (All)(HC) (AY 2014-15)

ACIT v. Kirti Singh (2022) 138 taxmann.com 216 (All)(HC)
Editorial : Notice issued in SLP filed the Revenue, ACIT v. Kirti Singh (2022) 287 Taxman 647 (SC), Refer, UOI v. Ashish Agarwal (2022) 286 Taxman 183 (SC)

S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Notice u/s 148 issued on 30-6-2021 without complying with mandatory provisions-Order is quashed-, Explanations to Notifications dated 31-3-2021 and 27-4-2021 issued by CBDT were to be declared ultra vires of 1961 Act and TLA Act, 2020 [S. 148, 151 Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020, S. 3,Art, 226]

Held that notice u/s 148 issued on 30-6-2021 without complying with mandatory provisions is held to be bad in law. Explanations to Notifications dated 31-3-2021 and 27-4-2021 issued by CBDT were to be declared ultra vires of 1961 Act and TLA Act, 2020.(AY. 2016-17)
Mohammed Mustafa v. ITO (2022) 287 Taxman 277 /114 CCH 59 (Karn)(HC)

S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Cash deposited-Notice after three years-Material available on record-Less than 50 Lakhs-Notice not valid [S. 148, 148(a)(d), 149 Art, 226]
Allowing the petition the Court held that this was a case where more than three years had elapsed from the end of the relevant assessment year. In that case, in order to initiate proceeding under sections 148 of the Act, it was not only required to be shown that some income chargeable to tax had escaped assessment, but also that it amounted to or was likely to amount to Rs. 50 lakhs or more than for that year. The material available on record did not show any cash deposits more than what was asserted by the assessee, which was far less than the amount as stated in the notice under section 148A(d) of the Act. However, the officer had proceeded to hold that there may be one or more accounts in the Corporation Bank in his name or permanent account number. It was on this surmise, bereft of any material on record that the authority seemed to justify its action and order dated March 29, 2022. The material available on record before the authority did not disclose any cash deposit or any other transactions which could be said to have escaped assessment, which was more than Rs. 50 lakhs. The order and proceedings were unsustainable in law.(AY.2015-16)

Abdul Majeed v.ITO (2022) 447 ITR 698/ 327 CTR 733 / 216 DTR 305 / 289 Taxman 304 (Raj)(HC)

S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Violation of principle of natural justice-Not furnished full information-Matter remanded [S. 147, 148, Art, 226]

Allowing the petition the Court held that there was violation of principles of natural justice inasmuch as the assessee was not furnished with full information based on which the assessment was sought to be reopened under section 147. The order dated April 7, 2022 passed under clause (d) of section 148A was set aside and the matter was remanded to the Assessing Officer to the position when he had issued the notice dated March 21, 2022 under section 148A(b). The assessee was directed to take note of the information mentioned in the

order dated April 7, 2022 passed under clause (d) of section 148A as the basis for reopening of the assessment and submit objections within 10 days and on receipt of the reply the Assessing Officer was to complete the assessment in accordance with law. Matter remanded.(AY. 2018-19)

Maharaja Edifice Pvt. Ltd. v. UOI (2022)446 ITR 508/ 289 Taxman 468 (Cal)(HC)

S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Conducting an enquiry is mandatory-Failure to consider reply to show cause notice-Order and subsequent notice was quashed-Matter remanded.[S.147, 148, 148A(b),148A(c),148A(d),Art,226]

Allowing the petition the Court held tha the Assessing Officer had violated the mandatory condition of section 148A(c) by not considering the reply of the assessee before passing the order under section 148A(d). Even if the reassessment was being done for verification in accordance with Explanation 1 to section 148 the Assessing Officer should have conducted an enquiry with respect to the information on a particular transaction in accordance with section 148A(a). The Assessing Officer ought to have scrutinised the contentions and submissions of the assessee before passing an order dated April 5, 2022 under section 148A(d). The acknowledgment of the reply dated April 4, 2022 received by the assessee from the e-filing portal of the Department showed that the assessee had filed a reply. Since the order under section 148A(d) had been passed on April 5, 2022, i. e., after receipt of the assessee's detailed reply dated April 4, 2022 the Assessing Officer should have considered the reply since it was available on record. The order passed under section 148A(d) and the notice issued under section 148 were quashed and set aside. The matter was remanded back to the Assessing Officer to pass a reasoned order in accordance with law after considering the reply filed by the assessee. Matter remanded.

Aten Capital Pvt. Ltd. v. ACIT (2022)447 ITR 346/ 326 CTR 878 /288 Taxman 570/ 214 DTR 149 (Delhi)(HC)

S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-No material or report produced which was basis for information to reopen assessment-Order and notice quashed and set aside-Department given liberty to furnish additional materials in support of allegations made in show-cause notice and proceed in accordance with law.[147, 148, 148A(b), 148A(d),Art226],

Allowing the petition the Court held that, no material or report produced which was basis for information to reopen assessment-Order and notice quashed and set aside.Department given liberty to furnish additional materials in support of allegations made in show-cause notice and proceed in accordance with law. (AY.2018-19)

BEST Buildwell Pvt. Ltd. v ITO (2022) 447 ITR 26 / 216 DTR 454 / 288 Taxman 670 (Delhi)(HC)

S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Failure to consider the reply of assessee –Verification-Order and subsequent

notice for reopening of assessment was quashed-Matter was remanded to pass a fresh reasoned order.[S. 147, 148A(b), 148A(c),148A(d), Form, 26AS, Art, 226]

Allowing the petition the Court held that the Assessing Officer should have conducted an enquiry with respect to the information in respect of the transactions in question in accordance with section 148A(a) and scrutinised the submissions of the assessee before passing an order under section 148A(d). Since the order under section 148A(d) had been passed on March 31, 2022, i. e., after receipt of the detailed reply dated March 24, 2022 by the assessee, the Assessing Officer should have considered the assessee's reply as it was available on record, not considering the reply of the assessee dated March 31, 2022 in response to notice under section 148A(b) of the Act before making an order under section 148A(d) of the Act was in violation of the mandate of section 148A(c). Consequently, the order passed under section 148A(d) and the notice issued under section 148 were quashed. The matter was remanded back to the Assessing Officer to pass a fresh reasoned order under section 148A(d) in accordance with law after considering the assessee's detailed reply dated March 24, 2022. Court observed that Section 148A(c) of the Income-tax Act, 1961 casts a duty on the Assessing Officer, by using the expression "shall", to consider the reply of the assessee in response to the show-cause notice under section 148A(b) before making an order under section 148A(d).

First Solar Power India Pvt. Ltd. v. ACIT (2022)447 ITR 337/ 327 CTR 102/ 288 Taxman 267/ 214 DTR 321 (Delhi)(HC)

S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Rejection of rectification application-Violation of principle of natural justice-Notice and assessment order was quashed-Cost was imposed on the Revenue-The respondents were directed to pay cost of Rs. 50,000 to the assessee.[S. 147, 148, 148A(b), 148A(d), 154,Art, 226]

Held, allowing the petition, that the order under section 148A(d) had been passed by the Assessing Officer arbitrarily and in gross violation of the principles of natural justice. Therefore, the orders under section 148A(d) and under section 154 and the notice issued under section 148 were unsustainable and therefore, quashed. Liberty was granted to the respondents to pass an order afresh under section 148A(d) after affording reasonable opportunity of hearing to the assessee. The system had been introduced and was being implemented by the respondents and, therefore, it was their primary duty to immediately remove the shortcomings, if any, in the system. For the wrongs of the respondents, the assessee could not be allowed to suffer and put to harassment. The respondents were directed to pay cost of Rs. 50,000 to the assessee.

Nabco Products Pvt. Ltd. v. UOI (2022)447 ITR 439/ 217 DTR 97 / 328 CTR 267 (All)(HC)

S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Grant of minimum of seven days' time is mandatory-Failure to grant causing prejudice-Order and subsequent notice for reopening of assessment was quashed. 147, 148, 148A(b), 148A(d), Art, 226]

Allowing the petition the Court held, that there had been a violation of the mandatory time period stipulated under section 148A(b) and therefore, prejudice had been caused to the assessee. Though the assessee had responded to the show-cause notice, it could not provide all the relevant details and documents since the time of three days to respond to the show-cause notice was inadequate. Consequently, the order dated April 6, 2022 passed under section 148A(d) and notice under section 148 were quashed.

Shri Sai Co-Operative Thrift and Credit Society Ltd. v. ITO (2022)447 ITR 350/ 214 DTR 22/ 326 CTR 790 (Delhi)(HC)

S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Request for adjournment to file response not granted-Assessing authority obliged to decide dispute in respect of a mount involved in transaction with reference to material submitted by assessee [S. 148, 149, Art, 226]

Held that the authority would be obliged under the law to decide this very objection with reference to the relevant material, which had been placed before it by the assessees as also by collecting other material including the bank transactions, slips, statements and specific record and reasons on the objection raised by the assessees that the income chargeable to tax was less than Rs. 50 lakhs as there was only single transaction of Rs. 34,01,000 and not two transactions as stated in the proceedings under section 148A. Though the notices under section 148A were issued to the assessees to file their response within the statutory period of seven days, the assessees had applied for adjournment but the materials placed did not show any extraordinary grounds for seeking adjournment. The orders passed under clause (d) of section 148A did not refer to the request made for adjournment by the assessees. Matter remanded.

Urmila v. ITO (2022)446 ITR 511/ 218 DTR 60 / 328 CTR 734 (Raj)(HC)
Surya Prakash v.ITO 2022)446 ITR 511/ 218 DTR 60 / 328 CTR 734 (Raj)(HC)
Vaijanti Dadhich v.ITO (2022)446 ITR 511/ 218 DTR 60 / 328 CTR 734 (Raj)(HC)

S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Professional income not shown-Assessment u/s 143(1)-Reassessment notice is valid-DTAA-India-USA.[Art, 15, Art.226]

Dismissing the petition the Court held that when the original assessment have been completed under section 143(1),there no need fresh tangible material for reopening of assessment and further the doctrine of change of opinion does not arise.(WP.(C). 11862/ 2022 dt 22-8 2022) (AY. 2018-19)

Ernst and Young U.S.LLP v. ACIT (2022) 449 ITR 425/ (2023) 146 taxmann.com 64(Delhi)(HC)

S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Assessment order not passed-Statement of entry provider-Case does not fall under the exceptional grounds-Alternative remedy-Writ petition was dismissed [S. 148, Art, 226]

Notice was issued u/s 148A(d) of the Act as well as notice u/s 148 of the Act. The assessee filed writ petition and contended that the notice was issued in a mechanical manner and without any independent application of mind. It was also contended that show cause notice pertains to assessment year 2014-15 which has been used to frame assessment for the AY.. 2018-19. Dismissing the petition the Court held that Revenue has relied on the statement of the entry provider which was made on oath in the course of Search and Seizure proceedings which was not contradicted. The assessee has only submitted bank statements. Court relied on following case laws Raymond Woollen Mills Ltd v.ITO (2008) 14 SCC 218, CIT v. Chhabil Das Aggarwal (2014) 1 SCC 603.(WP.No.(C) 5787 / 2022 & CM A. 17927/ 2022 dt 7-4-2022)(AY. 2018-19)

Gulmuhar Silk Pvt Ltd v. ITO (2022) 212 DTR 345/ 326 CTR 244 (Delhi)(HC)

S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Natural justice-Order passed without considering request for sufficient time-Order set aside [S. 147, 148A(b) 148A(d), Art, 226]

Allowing the petition the Court held that a request for grant of extension of time to file a reply to the notice under section 148A(b) should have been considered by the Assessing Officer by granting a reasonable extension.. The Assessing Officer himself had issued the notice under section 148A(b) to the assessee through e-mail and therefore the submission that if a reply or request was sent to the Assessing Officer on his official e-mail address he was not obliged to consider such e-mail could not be accepted. The order under section 148A(d) and the notice issued under section 148 both dated March 31, 2022 were quashed. The matter was remanded to the Assessing Officer for fresh consideration.(AY.2015-16)

Divij Singh Kadan v.PCIT (2022)445 ITR 445/ 214 DTR 417 / 327 CTR 193 (Delhi)(HC)

S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Natural justice-Order passed without considering request for sufficient time-Order set aside [S. 147, 148A(b) 148A(d), 151, Art, 226]

Allowing the petition the Court held that the notice and the order were cryptic as was evident from the fact that the information culled out from the assessee's own return and records (namely form 10DB, goods and services tax return, form 26AS) had been used to issue notice under section 148A(b) without mentioning what was wrong in those transactions, what were the apprehensions of the Assessing Officer and what were the points on which clarification was required. Expenditure incurred by the assessee on salaries, payment of professional fees and purchases could not amount to income having escaped assessment without there being any allegation that the employees or professionals to whom salaries and fees had been paid were dummies or fictitious entities. Reassessment was sought to be initiated merely for verification. Even if the reassessment was being done for verification, in accordance with Explanation 1 to section 148, the Assessing Officer should have conducted an enquiry in accordance with section 148A(a) with respect to the information and scrutinised the contentions and submissions of the assessee before passing an order under section 148A(d) of the Act. Court also held that the non-sharing of the information was violative of the principle of natural justice

The mandate of section 148A(c) had been violated since the order under section 148A(d) had been passed without considering the detailed reply filed by the assessee. The order passed under section 148A(d) and the notice issued under section 148 were quashed and the matter was remanded back to the Assessing Officer to pass a reasoned order in accordance with law after considering the assessee's reply. Referred Sabh Infrastructure Ltd. v. ACIT (2017) 398 ITR 198 (Delhi))(HC)

Divya Capital One Pvt. Ltd. v.ACIT (2022)445 ITR 436 / 214 DTR 1/326 CTR 781 (Delhi)(HC)

S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Failure to consider replies submitted-Notice and order set aside-Matter remanded.[147, 148, 148A(d),Art, 226]

On a writ petition challenging the reopening of the assessment on the ground that the reopening was done based on borrowed satisfaction relying upon the information of the risk management strategy of the Department and contending that no independent inquiry was conducted by the Assessing Officer to ascertain if there was any escapement of income and that its replies were not considered. Allowing the petition the Court set aside the notice and order and directed the Assessing Officer to pass a fresh reasoned order under section 148A(d) after considering the assessee's replies and the documents or evidence produced in response to the notice under section 148.(AY.2018-19)

Fena Pvt. Ltd. v. ACIT (2022)445 ITR 434 / 214 DTR 145 / 326 CTR 874 (Delhi)(HC)

S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Non-consideration of assessee's response to show-cause notice-Order quashed-Matter remanded.[S. 148A(b)) 148A(d), Art, 226]

Allowing the petition the Court held that since there was an error apparent on the face of the record in the order passed under section 148A(d) and the Department had failed to consider the assessee's written response that was received by the Department on March 30, 2022, the order dated April 1, 2022 was unsustainable and therefore, set aside. As a consequence, the notice under section 148 also dated April 1, 2022 was quashed. The Department was to

consider the matter afresh by considering the assessee's response of March 30, 2022 before taking further action in accordance with law.(AY.2015-16)

Jasmine Bonny Agitok Sangma v. UOI (2022)445 ITR 4/ 217 DTR 177/ 328 CTR 560 (Meghalaya)(HC)

S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice –Principle of natural justice-Show cause notice-Request for extension of time-Order passed before considering the reply-Order was set aside [S. 148,148A(b), 148A(c),148A(d),Art,226]

Allowing the petition the Court held, that the assessee had the right to get adequate time under the Act to submit its reply. Though the assessee had filed an application for extension of time for filing his response immediately after receipt of notice, the Assessing Officer had neither rejected the assessee's request nor directed the assessee to file a reply within the originally stipulated time. Since the order under section 148A(d) had been passed after receipt of the assessee's e-mail, the Assessing Officer should have considered the assessee's reply. By not considering the reply of the assessee the mandate of section 148A(c) had been violated since it casts a duty on the Assessing Officer, by using the expression "shall", to consider the reply of the assessee in response to the notice under section 148A(b) before making an order under section 148A(d). Consequently, the order passed under section 148A(d) and the notice issued under section 148 were set aside. The Assessing Officer was directed to consider the submission filed by the assessee and pass a reasoned order in accordance with law.(AY.2018-19)

Meenu Chaufla v. ITO (2022)445 ITR 1/287 Taxman 317 (Delhi)(HC)

S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Natural justice-Show cause notice-Must be given minimum period of seven days to reply the notice-Reply sent to registered post-Refusal to consider reply on the ground that it had not been sent through E. Portal-Not valid-Order quashed and set aside [S.148A(b), Art, 226]

Allowing the petition the Court held that clause (b) of section 148A of the Income-tax Act, 1961 makes it clear that while serving a notice on the assessee to show cause, such time may be specified in the notice being not less than 7 days and not exceeding 30 days from the date on which the notice is issued. Therefore, clause (b) of section 148A contemplates that a minimum of 7 days notice must be given. Accordingly, that notice dated March 17, 2022 under section 148A was issued to the assessee giving time up to March 21, 2022 and therefore, since the minimum seven days had not been given the consequential proceedings were vitiated. Moreover once a communication is sent by an assessee to the Revenue that too by registered post with acknowledgment due, due consideration is always expected to be given by the addressee, without which, if reply or documents or inputs received from the assessee or any one are ignored on the only ground that they had not been sent through the e-portal, it would amount to violation of principles of natural justice. The notice of reassessment and consequent proceedings were not valid.(AY.2015-16)(SJ)

G. Ravisankar v. ITO (2022) 445 ITR 296/ 214 DTR 422 / 289 Taxman 223 (Mad)(HC)

S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Public sector undertaking-Input tax credit fraud-Proceedings stayed until further orders.[S. 148, Art, 226]

The assessee is a public sector undertaking.The order passed under section 148A(d) of the Income-tax Act, 1961 and the notice issued under section 148 of the Act. On writ the Court held that on the facts it was unlikely that the assessee would be engaged in input tax credit fraud as alleged by the respondents. Accordingly, till further orders, no action should be taken in pursuance of the order passed under section 148A(d) and the notice issued under section 148.Stay was granted until further orders. (AY. 2018-19)

Bharat Heavy Electricals Ltd. v. PCIT (2022) 444 ITR 234 (Delhi)(HC)

S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Notice issued under Section 148 on 16-4-2021-Not Valid.[S. 148, Art, 226]

Allowing the petition the Court held that the newly inserted section 148A of the Income-tax Act, 1961 now specifically provides for issuance of a notice if the Assessing Officer takes a decision to initiate reassessment and therefore, a procedure has been laid down under section 148A which is required to be adhered to by the Assessing Officer after April 1, 2021, i. e., the date on which the Finance Act, 2021 ([2021] 432 ITR (St.) 52) came into force. After April 1, 2021, it is a mandatory requirement that prior to reassessment proceedings notice under section 148A of the Act should be issued to the assessee.On the facts it was not disputed that the notice was in fact issued under section 148 on April 16, 2021 though the date thereon was mentioned as March 31, 2021. The notice was not valid.

Yuvraj v. ITO (2022) 444 ITR 329 / 212 DTR 33/ 325 CTR 554 (MP)(HC)

S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Writ petition filed by assessee challenging consequential notice issued under section 148 on 30-6-2021-Notice issued [S. 148, Taxation and Other laws (Relaxation and Amendment of Certain Provisions) Act, 2020, S. 3(1), Art, 226]

Assessee challenged constitutional validity of Explanation contained in Notification No. 20 of 2021, dated 31-3-2021 as well as Notification No. 38 of 2021, dated 27-4-2021 issued by CBDT by exercising powers conferred by section 3 of TLA Act, 2020 contending that even though section 148 was substituted by Finance Act, 2021 w.e.f. 1-4-2021, said notifications allowed revenue to issue reassessment notice under old provisions of section 148, notice. Notice is issued. Ad-interim order in terms of paragraph 7 (d) till returnable date.

Bharti Hiren Uttamchandani v.UOI [2022] 285 Taxman 385 (Guj)(HC)

Shilp Associates. v. UOI(2022) 286 Taxman 242 (Guj)(HC)

S. 148A: Reassessment-Conducting inquiry, providing opportunity before issue of notice-Order passed without considering the replies of the assessee-Assessed income was Rs 10, 07 05, 88, 04, 543) Rupees One lakh seven hundred and five crores eighty eight lakhs four thousand five hundred and forty-three only)-Information to suggest-arbitrary, cryptic and without application of mind-not considering the response of the Assessee-Mechanical approval-Order under section 148A(d) set aside to the stage of the show cause Notice. (S. 147, 148, 148A(b), 151, Art, 226]

The assessee is in the business of Trading in derivatives. The order u/s 148A was passed assessment order was passed understanding the nature of the business and non application of mind by proposing to make addition of Rs Rs 10, 07 05, 88, 04, 543) Rupees One lakh seven hundred and five crores eighty lakhs four thousand five hundred and forty-three only.The assessee challenged the said order by filing writ petition. Allowing the petition the Court observed thatwhether it is "information to suggest" under amended law or "reason to believe" under erstwhile law the benchmark of "escapement of income chargeable to tax" still remains the primary condition to be satisfied before invoking powers under Section 147 of the Act. Merely because the Revenue-respondent classifies a fact already on record as "information" may vest it with the power to issue a notice of re-assessment under Section 148A(b) of the Act but would certainly not vest it with the power to issue a re-assessment notice under Section 148 of the Act post an order under Section 148A(d) of the Act.

As the Order was arbitrary, cryptic and without application of mind, and the Assessee was not given a fair chance of representation, the impugned order issued under Section 148A(d) of the Act and the notice issued under Section 148 of the Act are quashed and the matter is remanded back to the Assessing Officer for a fresh determination.

Divya Capital One (P) Ltd v. ACIT (2022) 445 ITR 136 / 214 DTR 1 (Delhi)(HC)

S. 149 : Reassessment-Time limit for notice-Board's circular dated 11-5-2022(2022) 444 ITR 43 (St)-Income escaping assessment to tax is less than Rs.50 lakhs-Reopening is not valid [S.148, 148A Art, 226]

Assessee challenged notice issued under un-amended section 148 on ground that they were not sustainable in law having been issued after 1-4-2021 i.e. after amendment to Income-tax Act, 1961 by Finance Act, 2021 introducing new provision i.e. sections 147 to 151 which came into force with effect from 1-4-2021. Revenue relied on the Judgement of Apex Court in UOI v. Ashish Agarwal (2022) 442 ITR 1/ 286 Taxman 183 (SC) and submitted that the notices issued after Ist April 2021n are liable to be treated as notice u/s 148A of the Act 1961 as substituted by the Finance Act, 2021 and also relied on the instruction No. F.No. 279/ MIsc /M-51 / 2022-ITJ, Ministry of Finance, Department of Revenue, CBDT, ITJ Section dated 11-5-2022(2022) 444 ITR 43(St). and judgement in Daujee Abhushan Bhandar Pvt Ltd v.UOI (2022) 444 ITR 41 (All)(HC). Court held that as per clauses 6. 2 and 7.1 of the Board's Circular dated 11 th May, 2022, if a case does not fall under clause (b) of sub section (i) or section 149 for the Assessment years 2013-14, 2014-15 and 2015-16 (Where the income escaping assessment to tax is less than Rs 50 lakhs and notice has not been issued within limitation under the unamended provisions of section 149, then proceedings

under the unamended provisions of section 149, cannot be initiated. Accordingly notice u/s 148 issue on Ist April 2021 for AY. 20014-15 and the notice dt. 13-1 2022 u/s 144 and reassessment order dt 13-1 2022 u/s 147 r.w.s 144B for AY. 2014-15 was quashed.(AY. 2014-15)

Ajay Bhandari v. UOI (2022) 446 ITR 699 / 288 Taxman 217/ 218 DTR 201 / 328 CTR 884(All)(HC)

S. 149 : Reassessment-Time limit for notice-Notice issued after expiry of limitation-Defect not curable-Notice not valid[S. 143(2), 292BB]

Dismissing the appeal of the Revenue the Court held that the notice under section 143(2) was issued on October 21, 2013. The financial year had come to an end on March 31, 2013. The failure of the Assessing Officer to issue the notice within the period of limitation under section 143(2) of the Act which is a notice giving jurisdiction to the Assessing Officer to frame the assessment could not be condoned by referring to section 292BB of the Act. The notice was barred by limitation.(AY. 2012-13)

PCIT v. Cherian Abraham (2022) 444 ITR 420/ 210 DTR 152/ 324 CTR 624 (Karn) (HC)

S. 149 : Reassessment-Time limit for notice-Date when digitally signed notice is entered in computer-Notice barred by limitation [S. 147, 148 282, 282A, Information Technology Act, 2000, S.13Art, 226]

The assessee challenged the notice received by the assessee is time barred on the ground that though the notice was digitally signed on 31 st March 2021, the said notice was received through e.mail on April 6, 2021. Allowing the petition the Court observed that sub-section (1) of section 149 of the Income-tax Act, 1961, starts with a prohibitory words that "no notice under section 148 shall be issued for the relevant AY after expiry of the period as provided in sub-clauses (a), (b) and (c)", section 282 of the Act provides for mode of service of notices. Section 282A provides for authentication of notices and other documents by signing it. Sub-section (1) of section 282A uses the word "signed" and "issued in paper form" or "communicated in electronic form by that authority in accordance with such procedure as may be prescribed". Thus, signing of notice and issuance or communication thereof have been recognised as different acts. The issuance of notice and other documents would take place when the e-mail is issued from the designated e-mail address of the concerned Income-tax authority. Therefore after a notice is digitally signed and when it is entered by the Income-tax authority in the computer resource outside his control, i. e., the control of the originator then that point of time would be the time of issuance of notice. Thus, considering the provisions of sections 282 and 282A of the Act, 1961 and the provisions of section 13 of the Information Technology Act, 2000 and the meaning of the word "issue" firstly the notice shall be signed by the assessing authority and then it has to be issued either in paper form or

be communicated in electronic form by delivering or transmitting the copy thereof to the person therein named by the modes provided in section 282 which includes transmitting in the form of electronic record. Section 13(1) of the 2000 Act provides that unless otherwise agreed, the dispatch of an electronic record occurs when it enters into computer resources outside the control of the originator. Thus, the point of time when a digitally signed notice in the form of electronic record is entered in computer resources outside the control of the originator, i. e., the assessing authority that shall be the date and time of issuance of notice under section 148 read with section 149.Accordingly the Court held that the notice under section 148 of the Act for the AY 2013-14 was digitally signed by the assessing authority on March 31, 2021. It was sent to the assessee through e-mail and the e-mail was undisputedly received by the assessee on its registered e-mail id on April 6, 2021. The limitation for issuing notice under section 148 read with section 149 of the Act, 1961 was up to March 31, 2021 for the AY 2013-14. Since, the notice under section 148 of the Act, 1961 was issued to the assessee on April 6, 2021 the notice under section 148 of the Act, 1961 was time barred.(AY. 2013-14)

Daujee Abhushan Bhandar Pvt. Ltd. v. UOI (2022) 444 ITR 41/ 212 DTR 1/ 325 CTR 659/ 286 Taxman 623 (All)(HC)

S. 149 : Reassessment-Time limit for notice-Foreign assets-Amendment to section 149 by Finance Act, 2012 with effect from 1-7-2012, which extended limitation for reopening assessment in case of income from foreign assets to sixteen years, is prospective in nature[S. 147, 148, 149((1)(c)]

Dismissing the appeal of the Revenue the Tribunal held that the amendment made by the Finance Act, 2012 to section 149 by the introduction of section 149(1)(c) which extends the period of reopening assessment where income in relation to any asset located outside India chargeable to tax has escaped assessment to 16 years, came into effect from 1-7-2012 has to be applied prospectively. Order of CIT(A) was affirmed. (AY. 1999-2000)

DCIT v. Indira D. Thakkar. (Smt.) (2022) 195 ITD 40/ 217 TTJ 569/ 213 DTR 369 (Mum) (Trib.)

S. 149 : Reassessment-Time limit for notice-Amendment to section 149(1), introduced with effect from 1-4-2012, providing longer time limit of 16 years for reopening assessments in foreign asset cases is expressly stated to be retrospective in nature.[S. 143(3), 147, 149(1)(c)]

Allowing the appeal of the Revenue the Tribunal held that Explanation to section 149 unambiguously provides that provisions of sub-sections (1) and (3), as amended by Finance Act, 2012, shall also be applicable for any assessment year beginning on or before 1-4-2012. Accordingly the amendment to section 149(1) providing longer time limit of 16 years for reopening assessments in foreign asset cases is expressly stated to be retrospective in nature, and there is no bar on validity of retrospectivity of taxing statute as long as it is clearly specified to be so. (AY. 1999-2000)

DCIT v. Mitali R. Lakhanpal (Smt.) (2022) 194 ITD 424 (Mum) (Trib.)

S. 149: Reassessment-Foreign asset-HSBC Geneva account of Trust-Time limit for notice-16 years-Assets held outside India-Introduced vide Finance Act, 2012-Retrospective in nature. [S. 147, 148, 151]

A search and seizure operation were carried out in the assessee's premises on August 10, 2011. Documents were found pertaining to a foreign bank account, based on the same, AY.1999-2000 was reopened and addition was made. On appeal the CIT(A) held that the assessment was time barred and not decided the issue on merit. On appeal by the revenue the assessee contended that the law was amended prospectively to provide a time period of 16 years for Foreign Assets vide Finance Act, 2012. Allowing the appeal of the revenue the Tribunal held that the amendment was retrospective in nature and will apply to assessments which had concluded before April 01, 2012. Matter was remanded to the CIIT(A) to decide on merit.(AY. 1999-2000)

DCIT v. Dilip J. Thakkar 2022) 194 ITD 245/ 211 DTR 177/ 216 TTJ 121(Mum) (Trib)

S. 150 : Assessment-Order on appeal-Reassessment-Deemed dividend –Addition deleted-Finding-Direction-Left open for the Assessing Officer in the hands of share holders-Order cannot be construed as direction [S. 147, 148, 153, Art, 226]

Commissioner (Appeals) passed an order deleting addition of deemed dividends and left it open for Assessing Officer to make assessment of such deemed dividend in hands of petitioner shareholders of assessee-company. The Assessing Officer issued notice under section 150 of the Act on the ground that the order of CIT(A) contained the direction as contemplated u/s 150 of the Act. On writ allowing the petition the Court held that the said order could not be said to have issued any directions as contemplated under section 150 of the Act. Court als0 observed that the finding in order of Commissioner (Appeals) was recorded without granting petitioners an opportunity of being heard, accordingly the reopening notices issued on basis of said order by invoking provisions of section 150 were quashed.(AY. 2010-11)

Dinar Tarcar v. ACIT (2022) 286 Taxman 638/ 213 DTR 57/ 326 CTR 310 (Bom.)(HC)
Manisha Tarcar (Mrs) v. ACIT (2022) 286 Taxman 638/ 213 DTR 57/ 326 CTR 310 (Bom.)(HC)

S. 150 : Assessment-Order on appeal-Time limit for reopening of assessment-Deemed dividend-Section 150 will apply only to reopening assessment to give effect to finding or direction in appellate orders of CIT(A) and not to appellate orders of any High Court u/s 260A,[S.2(22)(e), 116, 147, 148, 149, Art, 226]

The High Court held that loan given by closely held company to concern in which shareholder of the company is substantially interested, cannot be taxed as deemed dividends in the hands of the concern but left it open to Revenue to tax it in the hands of the shareholder. The Revenue re opened the assessment beyond period of six years from the end of the relevant assessment year on the basis of observation of the Delhi High Court. On writ

allowing the petition the Court held that observation of the High Court does not amount to a "direction" for section 150 purposes as it leaves it to discretion of Revenue. It cannot be called "finding" as it is not essential to adjudicate whether concern can be taxed or not. Even if it be a direction or finding, it is not an order by an authority under the Act as High court is not an authority. Section 150 will apply to appellate or revisional or reference order of High Court under any other Act. Assessment may be reopened beyond time u/s 150 to give effect to High Court orders passed under any other law but not to give effect to High Court 's orders passed under the Act. Reassessment notice was quashed.(AY. 2006-07)

Pavan Morarka v ACIT (2022) 211 DTR 201/ 325 CTR 377/ 136 taxmann.com 2(Bom)(HC)

Racahna Morarrka v ITO v ACIT (2022) 211 DTR 201/ 325 CTR 377/ 136 taxmann.com 2(Bom)(HC)

S. 151 : Reassessment-Sanction for issue of notice-After the expiry of four years-Corporate social responsibility-Sanction of Commissioner or Principal Commissioner is a pre-requisite for issuance of a reopening notice under section 148 after expiry of four years from end of relevant assessment year-Reopening notice with sanction of Additional Commissioner was quashed and set aside. [S.35AC, 80G, 92CA, 147, 148, 151(2), Art, 226]

Assessee-company, engaged in business of air-conditioning and refrigeration, had filed its return and claimed certain amount of expenses towards corporate social responsibility (CSR) as deduction under sections 35AC and 80G. Assessment was completed under section 143(3) read with section 92CA. After four years, a reopening notice under section 148 was issued after receiving sanction from Additional Commissioner under section 151 of the Act. The objection for reassessment notice and recorded reasons was dismissed. On writ allowing the petition the Court held that except for a general statement in reasons for reopening, Assessing Officer had not disclosed what material facts were not disclosed by assessee. It was further noted that sub-section (1) of section 151 provides that no notice shall be issued under section 148 by Assessing Officer, after expiry of a period of four years from end of assessment year, unless PCCIT/CCIT/PCIT/CIT was satisfied that reasons of reopening were fit for case. Since four years had expired from end of relevant assessment year, sanction under section 151 could only be granted by PCIT/CIT. Accordingly notice issued with sanction of Additional Commissioner was quashed and set aside. (AY. 2015-16)

Voltas Ltd v. ACIT (2022) 288 Taxman 506/ 213 DTR 169/ 327 CTR 748 (Bom)(HC)

S. 151: Reassessment-After the expiry of four years-Sanction for issue of notice – Sanction by Additional CIT is not valid-Taxation and other laws (Relaxation of Certain Provisions) Act, 2020-Not applicable-Reassessment notice and order disposing the objection was quashed.[S. 147, 148, 151 (1),, 151(2), Art, 226]

The reassessment notice dated 31-3-2021 was issued to the petitioner. The petitioner challenged the notice and order disposing the objections on various grounds. One of the ground of challenge was sanction 151 of the Act was obtained from Additional

Commissioner of Income tax instead of Principal Commissioner of Income-tax.Allowing the petition the Court held that approval ought to have been given by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner and not by the Additional Commissioner of Income Tax. Followed Voltas Ltd. v. ACIT 2022 SCC Online Bom 741 and J.M.Financial and Investment Consultancy Services Pvt. Ltd. v. ACIT. Accordingly reassessment notice and order disposing objection was quashed.(WP No. 1204 of 2022, dt 20-4-22) (AY. 2015-2016)

Vishakha Accounting Services Pvt Ltd. v. ACIT (Bom.)(HC) (UR)

S. 151: Reassessment-After the expiry of four years-Sanction for issue of notice – Sanction by Additional CIT is not valid-Taxation and other laws (Relaxation of Certain Provisions) Act, 2020-Not applicable-Reassessment notice and order disposing the objection was quashed.[S. 147, 148, 151 (1),, 151(2), Art, 226]

The petitioner challenged the notice and order disposing the objection on various grounds one of the ground of challenge was the sanction was obtained by Additional CIT hence the notice is bad in law. According to the Respondents relied on Taxation and other Laws (Relaxation of Certain Provisions) Act, 2020, by which limitation, inter alia, under provisions of section 151 (1)) and Section 151 (2) which were originally expiring on 31 st march 2020 stood extended to 31 st March 2021. Court held that Relaxation Act provisions cannot be applicable. Even if, the time to issue notice is considered to have been extended, that would not amount to amending the provision of section 151 of the Act. Allowing the petition the Court held that the approval ought to have been given by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner and not by the Additional Commissioner of Income Tax. Notice and order disposal of objection was quashed. Relied on Voltas Ltd. v. ACIT 2022 SCC Online Bom 741. and J.M. Financial and Investment Consultancy Services Pvt. Ltd. v. ACIT (2022) 215 DTR 98/ 327 CTR 458 / (2023) 451 ITR 205 (WP No. 43 of 2022, dt.27-4-22) (AY. 2015-2016)

Equitable Financial Consultancy Services Pvt. Ltd v. ITO (Bom.)(HC) (UR)

S. 151: Reassessment-Sanction for issue of notice –Mechanical approval-Non-application of mind-Approval was granted was based on erroneous statement recorded in reasons-Reassessment notice and order disposing the objection was quashed. [S. 147, 148, Art, 226]

The assessment was completed under section 143 (3) of the Act. The reassessment notice was issued and order disposing the objection was passed. The petitioner has objected for approval of erroneous reasons. On writ the court allowed the petition and held that while granting approval it was obligatory on the part of the Commissioner to verify whether there was any

failure on the part of the assessee to disclose full and true relevant facts in the return of income filed for the assessment of income of that assessment year. It was also obligatory on the part of the Commissioner to consider whether or not power to reopen is being invoked properly. Relied on Chhugamal Rajpal v. S.P.Chaliha(1971) 79 ITR 603 (SC) and German Remedies Limited v. DCIT (2006) 287 ITR 494 (Bom)(HC). Reassessment notice and order disposing the objection was quashed.(WP No. 930 of 2022, dt.29-4-2022)

Verna Trading v. ITO (Bom.)(HC) (UR)

S. 151: Reassessment-Sanction for issue of notice-Reasons for re-opening-Non application of mind-Reasons recorded and reasons supplied are different-Column 9. left blank-Column 8 the answer given was 'Yes' it should have been 'No'-Reassessment notice and order disposing objection was quashed.[S. 147,148,Art, 226]

The petitioner challenged the reassessment re assessment notice and order dispoising the objection on various grounds. One of the ground was approval for reassessment notice was granted in mechanically.. Allowing the petition the Court held that it is settled law as held by the Division Bench of this court in German Remedies Ltd. v. DCIT (2006) 287 ITR 494 (Bom)(HC) that while granting approval it was obligatory on the part of the PCIT to verify whether there was any failure on the part of the assessee to disclose full and true relevant facts in the return of income filed for the assessment of income of that assessment order. If the PCIT had only read the reasons and also the form for recording the reasons together and referred to other documents in the file, none of which seems to have been done, he would have sent the file back to the person who has filled the form for recording the reasons. Petitioner is justified in raising a contention that the approval granted itself suffered from non-application of mind.Notice of reassessment and order disposing objection was quashed**.** (WP No. 3101 of 2019, dt. 22-12-21)

Kandoi Polytex Pvt Ltd. v. ACIT (Bom.)(HC)(UR)

S.151 : Reassessment-Sanction for issue of notice-Errors in Column No.8 and 9 of the Form for re-opening-DCIT,PCIT,CIT to explain the basis on which re-opening was approved when the form had errors –wrong amount was mentioned as income originally assessed-Safeguards provided in Sections 147 and 151 were lightly treated by the Officers-Notice was quashed. [S.147, 148 Art, 226]

The petitioner filed the writ petition stating that notice issued under Section 148 of the Act and also an order on objections filed by petitioner for reopening the assessment. There were errors in Column,No.8 and 9 of the Form for re-opening. The sanction granted under Section 151 of the Act was on the basis of incorrect information. The amount mentioned as income originally assessed is Rs.6,01,66,964/-,whereas income originally assessed was Rs.11,11,34,621/-.Allowing the petition the Court held that the important safeguards provided in Sections 147 and 151 were lightly treated by the Officers. They appear to have taken the duty imposed on them under these provisions as of little importance. The court quashed and set aside the notice issued under Section 148 of the Act. The facts of Writ Petition No.3181 of 2019 and Writ Petition No.3615 of 2019 almost identical Writ Petition No.3023 of 2019 so both petitions were disposed accordingly. The notice was quashed. Referred Chhugamal Rajpal v. S.P. C haliha & Ors (1971) 79 ITR 603 (SC), German

Remedies Ltd v. Dy.CIT (2006) 287 ITR 494 (Bom)(HC) (WP No. 3023/2019 dt 15-3-2022 (AY. 2012-2013)

Dilip Bhagirathmal Jiwrajka v. DCIT (Bom)(HC)(UR)
Ashok Bhagirathmal Jiwrajka v. DCIT (Bom)(HC)(UR)
Surendra Bhagirathmal Jiwrajka v. DCIT (Bom)(HC)(UR)

S.151 : Reassessment-After the expiry of four years-Sanction for issue of notice-Approval obtained for issuing notice u/s 148 of the Act is not in accordance with the mandate of section 151-Sanction from Additional Commissioner of Income-tax and not from the PCIT-Notice issued is bad in law hence quashed. [S.148, Taxation and other Laws (Relaxation of Certain Provisions) Act, 2020, Art, 226]

Notice was under section 148 of the Act. The petitioner challenged the notice on the ground that the approval obtained for issuing notice u/s 148 of the Act is not in accordance with the mandate of section 151 as the said approval is of Addl. CIT instead of PCI. The Court held that, since four years had expired from the end of the relevant assessment year, as provided under section 151(1) of the Act, it is only the Principal Chief Commissioner or Chief Commissioner or Principal commissioner or Commissioner who could have accorded the approval and not the Additional Commissioner of Income Tax. On this ground alone, they have to set aside the notice issued under section 148 of the Act. (WP.(L.) No.7733of 2022 dt. 4-5-2022 2022) (AY 2015-16)

Johnson and Jonson Private Limited v. DCIT (2022) 213 DTR 340/ 326 CTR 868 (Bom)(HC)(UR)

S. 151 : Reassessment-Sanction for issue of notice-Application of mind by sanctioning authority-Notice valid [S. 147, 148, Art, 226]
Dismissing the petition, that there had been application of mind by the authority while granting the approval under section 151 for issue of notice under section 148 for reopening the assessment under section 147. During the assessment proceedings the assessee could raise all grounds before the Assessing Officer who should pass his orders in accordance with law. If the assessee was aggrieved by such order, he could avail of the remedy of filing appeal under the provisions of the Act.(AY.2015-16)

Ideal Associates v.ACIT (2022)448 ITR 260/(2023) 146 taxmann.com 225 (Bom)(HC)

S. 151 : Reassessment-After the expiry of four years-Limitation-Sanction-Sanction by Additional Commissioner instead of Principal Commissioner-Taxation and other laws (Relaxation of certain Provisions) Act, 2020 only extended period of limitation and not for approval by the competent Authority-Sanction by Additional Commissioner was held to be bad in law-Reassessment notice was quashed. [S. 147, 148, Art. 226]

The asessee is in the business of investment and financing activities. For the Assessment year 2015-16 the assessment was completed under section 143(3) of the Act on. 12-12-2017. The notice u/s 148 of the Act dt. 31-3-2021 was received by the assessee. The various objections of the assessee was rejected and order disposing the objection was passed on 24-1 2022. The assessee challenged the order disposing the objections on various grounds by filing the writ before the High Court. One of the ground of challenge was the assessment of the assessee was reopened after expiry of four years from the relevant assessment year after obtaining the approval from the Additional Commissioner instead of Principal Commissioner. The revenue contended that In view of the Taxation and other Laws (Relaxation of certain Provisions Act, 2020 (Relaxation Act) limitation, inter alia under provisions of section 151 (1) and section 151 (2) which were originally expiring on 31st March 2020 stand extended too 31st March, 2021. According to the Income tax officer the assessment year 2015-16 which falls under the category with in four years as on 31st March 2020, the statutory approval for issuance of notice under section 148 of the Act for the Assessment year 2015-16 may be given the Range Head as per the said provisions. Allowing the petition the Court held that since four years had expired from the end of the relevant assessment year, as provided under section 151(1) of the Act, it is only the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner who could have accorded the approval and not the additional Commissioner of Income tax. Accordingly the notice issued under section. 148 of the Act with the approval of Additional Commissioner was quashed (AY. 2015-16)

J.M.Financial and Investment Consultancy Services Pvt. Ltd. v. ACIT (2022) 215 DTR 98/ 327 CTR 458 /(2023) 451 ITR 205 (Bom.)(HC)

S. 151 : Reassessment-Sanction for issue of notice-After the expiry of four years-Commissioner has to apply his mind and cannot pass order mechanically-Notice quashed and set aside [S. 147, 148, Art, 226]

The assessee is in the business of jewellery and bullion trade where as in the reasons recorded it is alleged that the assessee has failed to disclose truly and fully all material facts relevant to "salary" of which income chargeable to tax had escaped assessment. On writ allowing the petition, the Court held that the notice having been issued after the expiry of four years from the end of the relevant AY, satisfaction of the Commissioner based on the reasons recorded by the Assessing Officer that it was a fit case for issue of notice under section 148 was mandatory. Sanction of the Commissioner as prescribed under section 151 had not been obtained satisfactorily before issuance of notice under section 148. The contradictions or errors in the reasons recorded were not typographical errors. The Assessing Officer had not applied his mind after drafting the reasons or before forwarding them to the Commissioner for consideration. If the Commissioner had read the reasons he would have noted the errors or contradictions. Satisfaction had been endorsed mechanically without even reading the reasons. Therefore, the notice issued under section 148 was quashed and set aside.(AY. 2012-13)

Sagar Bullion Pvt. Ltd. v. UOI (2022) 444 ITR 686/ 209 DTR 281/ 324 CTR 146 (Bom) (HC)

S. 151 : Reassessment –Sanction-After the expiry of four years-Sanction was granted by Addl.CIT and not PCIT-Reference contained another entity-Non application of mind-Order was quashed and set a side [S. 148, 151, Art, 226]

The reopening of the assessment was challenged on the ground that sanction was granted by Addl. CIT and not PCIT. Allowing the petition the Court held that the Assessing Officer has to record the reason which has to be final and it cannot be draft submission. Sanction cannot be given mechanically. In the reference to recorded reasons pertains to another entity by the name Laxi Organic, which shows non application of mind. Notice was set aside.

Lintas India (P) Ltd v. UOI (2022) 324 CTR 539/ 209 DTR 473 (Bom)(HC)

S. 151 : Reassessment –Sanction-After the expiry of four years-Sanction was given mechanically-Without application of mind-Reason recorded stated that the assessment was completed u/s 143(1), where as the assessment was u/s 143(3)-Business of jewellery-Reason stated that failure to disclose salary-Reassessment notice was quashed [S. 147, 148, Art, 226]

The assessment was completed u/s 143(3) of the Act. The reassessment notice was issued after expiry of four years. In the recorded reasons it was stated that stated that the assessment was completed u/s 143(1), where as the assessment was u/s 143(3). Assessee is in the business of jewellery where as in the recorded reason it was that failure to disclose salary. On writ the High Court quashed the reassessment notice on the ground that sanction was given mechanically without application of mind.(AY. 2012-13)

Sagar Bullion Pvt Ltd v. UOI (2022) 324 ITR 146/ 209 DTR 281 (Bom)(HC)

S. 151 : Reassessment –Sanction-Recorded reasons are not correct-Date of return was filed on 25 th November 2014, where as in the recorded reasons it was stated as 27 th October, 2016-Assessee holds shares 0.01%, i.e. 10 shares in itself-How can a company hold its own shares-Reassessment notice was quashed.[S.147, 148, Art, 226]

The Assessment of the petitioner was completed u/s 143(3) of the Act. In the recorded reason it was stated that the return was filed on 25 th November 2014, where as in the recorded reasons it was stated as 27 th October, 2016.It was stated that assessee holds shares 0.01%, i.e. 10 shares in itself. How can a company hold its own shares. On writ allowing the petition the Court held that approval granted by the Dy. Commissioner without application of mind and verifying the facts. The reassessment notice was quashed. Followed Ankita A.Choksey v. ITO(2019) 411 ITR 207(Bom)(HC), German Remedies Ltd v. Dy.CIT(2006) 287 ITR 494 (Bom)(HC). (AY. 2014-15)

Sea Glimpse Investments Pvt Ltd v. Dy.CIT(2022) 209 DTR 318/ 324 CTR 535 (Bom)(HC)

S. 151 : Reassessment-Sanction for issue of notice –Reason recorded was furnished of other assessee-Two further reasons were signed by successor officer and no fresh approval was obtained-Reassessment notice was quashed [S. 147, 148, Art, 226]

The petitioner challenged the issue of notice on the ground that approval to annexure to the recorded reason was not legible. The petitioner also contended that the recorded reason

pertain to other assessee. Two other reasons are signed by successor officer and not the Officer who has issued the notice. Allowing the petition the Court held that the reasons pertain to another assessee and sanction was also not in accordance with law. The notice was quashed.(AY. 2012-13)

Novelty Properties & Investment Pvt Ltd v. ACIT (2022) 209 DTR 185/ 325 CTR 373 (Bom)(HC)

S. 151 : Reassessment-Sanction for issue of notice-After the expiry of four years-Approval and reasons recorded of same date-Sanction was not properly obtained-Reassessment notice was quashed. [S. 147, 148, Art, 226]

Allowing the petition the Court held that the approval that has been provided to assessee and copy whereof has been annexed to the petition is dt. 26th March, 2013 and has been received by Asstt. CIT on 28th March, 2013, whereas the reasons for reopening itself is dt. 28th March, 2013. The Asstt. CIT did not annex any document to indicate that reasons were recorded on 25th March, 2013, nor has he explained as to how the reasons provided to assessee show the date 28th March, 2013. Therefore, the explanation given in affidavit in reply is rejected and it is held that sanction was not properly obtained. On this ground alone the notice has to be quashed and set aside. Court also observed that the reasons recorded do not indicate any non disclosure of material facts. Reassessment notice was quashed.Followed Dell India (P) Ltd v. JCIT (2021) 432 ITR 212 (FB) (Karn)(HC) (AY. 2006-07)
Wyeth Ltd. v. ACIT (2022)211 DTR 393/ 329 CTR 803 (Bom) (HC)

S. 151 : Reassessment-Sanction for issue of notice-No prior sanction was granted before issue of notice-Notice was quashed [S. 147, 148, Art, 226]

Allowing the petition the Court held that there is complete non-application of mind on the part of Joint CIT, Range 5(3) Mumbai while granting sanction 151 of the Act. There is no prior sanction was granted before issue of notice under section 148 of the Act. Accordingly jurisdictional condition was not satisfied hence the notice was quashed.(AY. 2014-15)

Svitzer Hazira (P) Ltd v. ACIT (2022) 441 ITR 19/ 285 Taxman 393 / 211 DTR 387 / 326 CTR 96 (Bom)(HC)

S. 151: Reassessment-Notice-After the expiry of four years-without proper sanction-Reassessment proceedings quashed.[S. 148, 151(1)]

The AO issued a notice under section 148 of the Act beyond a period of 4 years after obtaining sanction from the Joint Commissioner as per section 151(2) instead of Pr. CCIT or PCIT as per section 151(1) of the Act. The High Court held that without the sanction of a competent authority, there is a jurisdictional error in the issuance of notice under section 148 and hence the assessment order and the impugned order under section 148 are quashed. (AY 2015-16)

Raj Kumar Jain v. PCIT (2022) 215 DTR 101 / 327 CTR 461(MP)(HC)

S. 151 : Reassessment-After the expiry of four years-Sanction for issue of notice-Recording of separate reasons not necessary-Reassessment notice is held to be valid.[S. 147, 148, Art, 226]

The sanctioning authority is not required to separately record his reasons for granting a sanction if he approves the reasons recorded by the AO. In such a case, it cannot be said that the sanction has been granted in a mechanical manner and, therefore, the proceedings are bad in law. Further, since in this case, no questions were asked on the issue in which reassessment was sought to be done, it would not constitute a case of change of opinion. (AY. 2014-15)

Premlata Soni (Smt.) v. NEAC (2022) 440 ITR 578 (MP) (HC)

S. 151 : Reassessment-Sanction for issue of notice-Issuance of Notice requires the sanction of PCIT where the Notice is issued after 4 years-Relaxation Act not a bar for appropriate sanction-Reassessment notice is held to be bad in law.[S. 147, 148, Art, 226]

It has been held that where the Notice issued on March 31, 2021, beyond 4 years, is with the approval of JCIT considering the Relaxation Act, the same should be issued with the sanction of the PCIT or CIT. Impugned notice u/s 148 is quashed. (W.P.(C) No.20919 of 2021 dated January 24, 2022& Ors W.P.(C) No.20919 of 2021 dated January 24, 2022)

Ambika Iron and Steel Pvt. Ltd v. PCIT (2022) 326 CTR 871 / 213 DTR 446 /(2023)452 ITR 285 (Orissa) (HC)

S. 151 : Reassessment - Sanction for issue of notice - After the expiry of four years – Valid sanction- Sanction received from JCIT instead of PCIT/CCIT/CIT- Law in force on the date of issue of notice is applicable – Reassessment notice is valid -Source of deposit not substantiated- Addition as cash credit affirmed .[S. 68, 148,151(2)]

The Tribunal held that the notice under section 148 was issued after a lapse of a period of four years from the end of the relevant assessment year. The amendment made to section 151(2), requiring the permission of the PCIT/CCIT/CIT for issue of such notices did not apply retrospectively, the law in force on the date of issuance of notice was to be applied. Hence, the Joint Commissioner, whose permission was taken for issuance of notice under section 148, was the competent authority at that time. The notice was held valid. On merit the aassesssee has not substantiated the source of deposit hence the addition as cash credit affirmed**.** (AY. 2008-09).

Shyam Gidwani v. ITO (2022)98 ITR 665 (Jaipur) (Trib)

S. 151 : Reassessment - Sanction for issue of notice - After the expiry of four years - Sanction of Prescribed Authority — Failure by Assessing Officer to obtain approval of prescribed authority Qua "Reasons to believe" -— Reassessment Invalid — Assessment is liable to be quashed [S. 147 148]

Held, that there could be two sets of situations possible, viz. (i) that the Assessing Officer having jurisdiction over the case of the assessee had failed to obtain the requisite sanction under section 151 of the Act from the Principal Commissioner qua his "reasons to believe" and had issued the notice under section 148 ; or (ii) that the ITO, Ward-1(3), had proceeded with on the basis of the sanction under section 151 obtained by the ITO, Ward-2(1), and dispensed with the statutory requirement of obtaining separate sanction qua the "reasons to believe". In either of the situations, the assumption of jurisdiction by the ITO, without obtaining the requisite sanction, was devoid and bereft of any force of law. If the ITO, had pre-empted the grant of sanction by the Principal Commissioner and, prior to obtaining, had issued the notice under section 148, the reassessment notice issued was invalid in the eyes of the law. (AY.2010-11)

Ramesh Kumar v. ITO (2022)95 ITR 79/ 218 TTJ 749 (Amritsar)(Trib)

S. 151: Reassessment-Sanction for issue of notice-two separate notices-Same assessment year-No application of mind-Reassessment was quashed [S. 147, 148]

The Commissioner grants sanction/approval on two separate reassessment notices initiated by the AO on the same date and for the same assessment year, clearly revealing non-application of mind. Further, the subsequent notice fails to mention the earlier approval granted, leading to severe doubts on the application of mind by the Commissioner at the time of grant of approval to the impugned reasons to believe. ((AY. 2009-10)

Kashmir Singh v. ITO (2022) 216 TTJ 523/ 211 DTR 217 (Amritsar)(Trib)

S. 151: Reassessment-Sanction for issue of notice-Without application of mind-Reassessment is quashed.[S. 147(b), 148]

The sanctions granted by the CIT reveal that the Assessing Officer had mentioned the relevant section as '147(b)', which has been omitted from the Statute w.e.f. 01.04.89. It shows that the CIT has not applied his mind to the contents and granted approval mechanically by saying 'Yes'. An approval granted without application of mind does not constitute a valid approval u/s 151 of the Act; hence, the jurisdiction to reopen the assessment by the Assessing Officer based on invalid approval was bad in law. (AY. 2009-10)

Alankar Commodeal (P) Ltd. v. ITO (2022) 216 TTJ 445 / 213 DTR 161 (kol) (Trib.)

S. 153 : Assessment-Reassessment-Limitation –Limitation starts only from last date of financial year wherein notice was served on assessee and not from when notice was issued or sent by revenue. [S. 147, 148, 153(2), Art, 226]

A reopening notice under section 148 was issued on assessee on 30-3-2018 and served on 3-4-2018 and assessment was completed. On writ the assesssee contended that assessment order passed was barred by limitation as prescribed under section 153(2) of the Act on the ground that since reopening notice was issued on 30-3-2018, limitation would start from 1-4-2018 upto 5-6-2018 and then resume after stay was vacated i.e. from 27-4-2021. Thus assessment ought to have had been completed on or before 20-11-2021. Court held that since serving date of reopening notice fell in financial year 2018-19, last date of financial year in which notice was issued would be 31-3-2019 and accordingly limitation would start from 1-

4-2019 only and not from 1-4-2018.Accordingly the order passed under section 147 on 21-2-2022 was well within limitation. (AY. 2011-12)
Rajesh Gupta v.NFAC (2022) 288 Taxman 553 (Mad)(HC)

S. 153 : Assessment-Reassessment-Limitation-Tribunal remanding back for denovo adjudication-Notice beyond limitation period was quashed-Directed to refund the amount in excess of admitted liability along with interest [S. 92CA(3A), s153 (4), 240, 244, 254(1), Art, 226]

Appellate Tribunal order dated 3-11-2016 set aside the assessment order and remanded the proceeding to the AO for a fresh decision. The PCIT had received the copy of order on 29-12-2016.The time limit for completion of assessment in terms of section 153(3) would be nine months from end of the financial year in which the order was received under section 254 of the Act. The order required to be passed on 31-12-2017 as the financial year ending would have been 31-3-2017. The TPO issued notice dated 9-7-2021. The assessee filed writ petition and challenged the notice stating that it was barred by limitation and sought the refund of the amount with applicable interest u/s 244 of the Act. The Court held that the notice is clearly barred by limitation and directed the Department to refund the amount in excess of admitted liability along with interest.(WP No. 13646 / 2021 dt. 2-2-2022)(AY. 2006-07)

TE Connectivity India Pvt Ltd v. DCIT (2022) 138 taxmann.com 148 (Karn)(HC)

S. 153 : Assessment – Reassessment – Limitation –Ante-dated order -Direction of Addl. CIT- AO in April, 2015 and signed by pre-dating it as 30th March, 2015- Assessment order was time barred and quashed . [S. 147, 148 , 153(2)]
Notice under S. 148 was served on the assessee on 30th March, 2014 , the time-limit for reassessment as per S. 153(2) was available upto 31st March, 2015. Reassessment order was passed by AO purportedly on 30th March, 2015 incorporating the directions dt. 31st March, 2015 issued by the Addl. CIT under s. 144A of the Act . The Departmental Representative contended that it is a typographical error and the order may be treated passed on 31st March, 2015. The Tribunal held that the order passed by the Assessing Officer dt. 30th March, 2015 incorporating the directions dt. 31st March, 2015 issued by the Addl. CIT under S. 144A, it is obvious that the order was actually passed after 31st March, 2015 and, therefore, it was barred by limitation. (AY.2009-10)
Dy. CIT v. Clarion Technologies (P) Ltd. (2022) 216 TTJ 23 (UO) (Pune)(Trib)

S. 153: Assessment – Limitation –Threshold monetary limit of Rs. 5 crores not available to characterise transactions with associated enterprises as specified domestic transactions — Order is nullity and barred by limitation . [S.92BA, 92CA(3)]

The Tribunal held that "specified domestic transactions" has been defined under section 92BA of the Act which states that the aggregate of such transactions entered into by the assessee must exceed a sum of Rs. 5 crores at the relevant time. In the instant case the threshold monetary limit of Rs. 5 crores were not available to the Assessing Officer to

characterise the assessee's transactions with its associated enterprises as specified domestic transactions to enable him to make a reference to the Transfer Pricing Officer. The order of the Transfer Pricing Officer under section 92CA (3) was thus non-est and a nullity in the eyes of law. Consequently, the extension of time under the erstwhile provisions of section 153 for passing the assessment order based on such non est order from the Transfer Pricing Officer was not available to the Assessing Officer. The assessment order passed beyond the ordinary time limit of December 31, 2016, available under section 153 of the Act, was barred by limitation. (AY. 2014-15)

Garg Acrylics Ltd. v. Add. CIT (2022)96 ITR 61 (SN) (Delhi)(Trib)

S. 153 : Assessment – Reassessment – Limitation –Order was passed beyond the period of nine months – Order is bad in law .[S. 147 , 148, 153(2)]

Based on the information that a bank account was not disclosed by the assessee in the return of income, reassessment proceedings were initiated. The CIT(A) made an addition of 32% of the said receipts to the total income of the assessee. The assessee challenged the initiation on the jurisdictional ground that the said proceedings are barred by limitation. As per section 153(2) of the Act as was then available on the statute, the assessment u/s 147/143(3) could have been framed latest up to 9 months from the end of financial year in which notice u/s.148 of the Act was served.

In the present case, the assessment had been framed 11 months after the limitation period and hence the jurisdictional requirement had not been satisfied. The appeal of the assessee was allowed.(AY. 2005 -06 , 2006 -07)

Mohd. Arif v. ITO (2022) 219 TTJ 485 / 217 DTR 104 (Raipur)(Trib)

S. 153 : Assessment-Reassessment-Limitation-Pre-dated re-assessment order incorporating directions of Add'l CIT under section 144A passed before the date on the directions under section 144A as well as consequential first appellant proceedings set aside. [S.144A]

Assessee's case was selected for scrutiny. During the proceedings, it approached the Add'l CIT under section 144A whose directions were received on 31 March 2015 i.e. the last day by when the assessment order could've been passed. Assessment order was dated 30 March 2015. Before CIT(A), assessee unsuccessfully argued the order to be pre-dated and therefore time barred.

On appeal, the Hon'ble Tribunal adjudicated the matter in favor of the assessee and held the pre-dated order passed on 30 March 2015 incorporating the directions dated 31 March 2015 issued by the Addl. CIT, directions of which are subsequent to the assessment order cannot be saved by reason of date wrongly mentioned as 30 March 2015 instead of 31 March 2015. It is impossible that the direction of the Addl. CIT under section 144A, having been signed on 31-03-2015 was dictated by the assessing officer and typed after considering everything and signed on the same day itself. This is indicative of the order being passed pre-dated. Therefore, the same is barred by limitation and the assessment order and the consequential first appellant proceedings were set-aside. (AY. 2009-10)

Clarion Technologies Private Limited v. DCIT (2022) 216 TTJ 23 (UO) (Pune) (Trib)

S. 153A: Assessment-Search or requisition-Limitation-Interpretation-Precedent-Divergent view of different High Courts-SLP dismissed in limine-One favouring the assessee should be followed.[S. 132, 153B,]

The question before the High Court was
(A)" Whether the ITAT was correct in observing that the assessment order dated 30 th December 2016 under section 144 read with section 153A of the Income-tax Act 1961 received by the assessee on 9 th January 2017 could be said to be barred by limitation, when there was no indication to show that the Assessing Officer did not pass the said order on 30 th December, 2016 ?

(B) Whether the ITAT was correct in holding that when there are two divergent views of different High Courts, one favouring the assessee should be followed, totally ignoring the fact that the decision of the High Court favouring the Revenue was confirmed by the Apex Court, in as much as the SLP filed in that regard was dismissed ?"

High Court affirmed the order of the Tribunal. (AY. 2009-10 to 2015-16)

PCIT v. Nidan (2022) 220 DTR 137/ 329 CTR 919 (Orissa)(HC)

S. 153A: Assessment-Search or requisition-No incriminating material was found-Sale and purchase of agricultural land held to be bogus / sham / paper transactions-Judgement of Supreme Court rendered after the assessment cannot be said to be incriminating-Order of the Tribunal is affirmed [S.132(4), 260A]

Dismissing the appeal of the Revenue the Court held that in the absence of any incriminating material, the completed assessment cannot be reiterated and abated assessment or reassessment.Court also held that sale and purchase of agricultural land held to be bogus / sham / paper transactions. Judgement of Supreme Court rendered after the assessment cannot be said to be incriminating.(AY. 2001-02 to 2003-04)

PCIT v. PCF Ltd (2022) 220 DTR 467/ (2023) 330 CTR 89 (Delhi)(HC)

S. 153A: Assessment-Search or requisition-Share certificate-Disclosed in the books of account-Statement of a third party-Opportunity of cross-examination not given-Order is bad in law [S. 68, 132(4), 133(6)]
The AO held that share certificates issued to investor companies found on the premises of the assessee company instead of the premises of the respective investor companies amounted to incriminating evidence. However, no addition u/s 68 was made on the basis of such share certificates, instead, the AO relied on the post-investigation report and statement of a third Party to make an addition to the total income of the Assessee. It was held that such share certificates cannot amount to incriminating evidence as they merely recorded transactions, which were duly recorded and disclosed in the books of accounts. Further, the addition made on the basis of a third-party statement cannot be sustained since the Assessee was not provided with an opportunity to cross-examine the witness despite requesting the same. Relied upon, Andaman Timber Industries v. CCE (2015) 62 taxmann.com 3 / 127 DTR 241 (SC), CIT c. Kabul Chawla (2015) 380 ITR 573 (Delhi)(HC) (AY 2010-11)
PCIT v. JPM Tools Ltd (2022) 219 DTR 201 / 329 CTR 526 (Delhi)(HC)

153A: Assessment in case of search or requisition-Examination or cross Examination-Principles of Natural Justice-If statements are not going to be used against the petitioner-Right of cross examination is not required-Writ petition was dismissed. [S. 132, 132(1), 132(1A) 292C, Art. 226]

The Writ Petition is filed to permit Examination / Cross Examination of the persons as mentioned in Schedule A and B. The Court while dismissing the Writ Petition observed that if statements are not going to be used against the writ petitioner as set out in the counter affidavit and as captured in their order, it cannot be said that the persons, who made the sworn statements have to be cross-examined. Therefore, it is not necessary to further dilate into 'Natural Justice Principle'.(AY. 2011-12 too 2017-18) (SJ)

SRS Mining v. Dy. CIT (2022) 217 DTR 361 / 328 CTR 623 (Mad)(HC)
Editorial : Refer, SRS Mining v. UOI (2022) 328 CTR 510 / 217 DTR 321 taxmann.com 272 (Mad)(HC)

S. 153A: Assessment-Search or requisition-Cash credit-Capital gain-Sale of shares-Incriminating material-When no incriminating material found during course of search and AO had made additions solely relying on disclosures made by Managing Director of a company on which search was conducted, impugned addition was unjustified. [S. 10(38), 45, 68]

Assessment in case of assessee was completed. Subsequently, Investigation wing conducted a search & seizure and survey operations upon company KRPPL and its group. During post-search investigations, Managing Director of KRPPL made statement and admitted that said company had provided bogus accommodation entries in respect of exempt LTCG by way of sale of shares to various beneficiaries. On basis of same, a notice under section 153A was issued upon assessee that he was also one of beneficiaries of such bogus exempt LTCG claimed by him under section 10(38). He further made an addition on account of such accommodation entry received by assessee under section 68 of the Act. Tribunal deleted the addition on the ground that no incriminating evidence or document was found during search proceedings pertaining to assesseeand on date of search, assessment with respect to relevant assessment year had already stood completed. Since no assessment was pending for relevant assessment year on date of search and no incriminating material was found during course of search pertaining to assessee, impugned addition under section 68 to income of assessee solely relying on disclosures made by Managing Director of a company on which search was conducted was unjustified and same was deleted. High Court affirmed the order of Tribunal. (AY. 2011-12)
PCIT v. Shiv Kumar Agarwal. (2022) 289 Taxman 278 (Delhi)(HC)
S. 153A: Assessment-Search or requisition-Long term capital gains on sale of shares-No incriminating material was found-Merely on the basis of statement of and letter of Managing Director of company-Addition cannot be made [S. 10(38), 68]

Dismissing the appeal of the Revenue the Court held that the Revenue had not placed on record any incriminating material which was found as a result of search conducted on assessee. On date of search, admittedly, assessment with respect to relevant assessment year

under consideration stood completed. Therefore, since no assessment was pending for relevant year on date of search and no incriminating material was found during course of search,the Tribunal was justified in deleting the addition.(AY. 2011-12)

PCIT v. Suman Agarwal.(Ms) (2022) 289 Taxman 674/(2023)451 ITR 364 (Delhi)(HC)

S. 153A: Assessment-Search or requisition-Assessment of undisclosed Income-Notice should be based on material seized under Section 132 or documents requisitioned under Section 132A-Notice was quashed.[S. 132, 132A, Art, 226]

There was no incriminating material was found or requisitioned. The notice was issued u/s 153A of the Act. The assessee filed writ to quash the notice issued u/s 153A of the Act. Allowing the petition the Court held that the Department did not indicate in its notice what were the seized material under section 132 or books of account or other documents or any assets requisitioned under section 132A. The notice was bereft of any material. The Department had not mentioned in the notice the basis for issuing the notice under section 153A so that the assessee could comply with it as prescribed. The notice issued under section 153A was not valid.(AY.2012-13)

Underwater Services Co. Ltd. v. ACIT (2022)448 ITR 691 / 209 DTR 476/ 326 CTR 208 (Bom) (HC)
Samson Maritime Ltd v. ACIT 2022)448 ITR 691 / 209 DTR 476/ 326 CTR 208 (Bom) (HC)

S. 153A: Assessment-Search or requisition-Notice –Search and seizure-No incriminating material found during search-Time for issue of notice under section 143(2) expiring on date of search-Additions cannot be made. [S. 132, 143(2)]

Held, dismissing the appeal of the Revenue the Court held that both the Commissioner (Appeals) and the Tribunal had given concurrent findings of fact that no incriminating evidence found during the search conducted under section 132 had been brought on record by the Assessing Officer and the time for issuing notice under section 143(2) had elapsed at the time the search proceedings had been undertaken. (AY.2009-10)

PCIT v. Alchemist Capital Ltd. (2022)447 ITR 668 (Delhi)(HC)

S. 153A: Assessment-Search or requisition-Assessments Completed and final as on date of search-No incriminating material found during search-Order of Tribunal affirmed-No substantial question of law.[S. 68, 69, 132,143(1), 143(3), 260A]

Dismissing the appeals the Court held that assessments for the assessment years 2008-09, 2009-10 and 2010-11 had attained finality prior to the date of search and no incriminating documents or materials had been found and seized at the time of search under section 132. Consequently, no additions could be made under section 153A since these assessments had not abated. The returns filed had been duly accepted and intimation under section 143(1) had been issued. Neither notices under section 143(2) nor reassessment notices under section 148 had been issued. Order of Tribunal affirmed. Followed CIT v. Kabul Chawla (2016) 380 ITR 573 (Delhi)(HC), CIT v. Continental Warehousing Corporation (Nhava Sheva)Ltd (2015) 374 ITRR 645 (Bom)(HC) (AY.2008-09, 2009-10 and 2010-11)

PCIT v. Bhadani Financiers Pvt. Ltd. (2022)447 ITR 305/ 218 DTR 294 / 329 CTR 651 (Delhi)(HC)

S. 153A: Assessment-Search or requisition-No mandatory requirement that assessment or reassessment should be based only on basis of incriminating material found during search-Other incriminating material can be relied on-Order of Tribunal set aside and directed to decide on merits. [S. 69, 132]

Allowing the appeal of the Revenue the Court held, that the findings of fact recorded in the assessment order and the order of the Commissioner (Appeals) clearly showed that the incriminating materials relating to the assessees were available on record and were also found in the search and investigation relating to certain other persons. Thus it could not be said that either no incriminating materiel was found or that no incriminating material was available on record against the assessees on the basis of which assessment orders under section 153A of the Act had been passed. Thus, the findings recorded and conclusion drawn by the Tribunal could not be sustained. The assessment orders under section 153A were valid. Order of Tribunal set aside and directed to decide on merits. Court also observed thata bare reading of section 153A of the Income-tax Act, 1961 reveals that it provides for assessment or reassessment of the total income and not merely computation of undisclosed income on the basis of evidence found as a result of search. Thus, for assessment or reassessment under section 153A, it is not the mandatory requirement that assessment or reassessment has to be made only on the basis of incriminating materials found in the search. Section 153A does not exclude assessment or reassessment on consideration of other incriminating materials including incriminating materials available on record. Therefore, when the language of section 153A is plain and unambiguous, it cannot be given a restricted meaning. To do so, it would amount to legislation by the court or authority under the Act, which is not permissible.

PCIT v. Mehndipur Balaji (2022)447 ITR 517 (All)(HC)

S. 153A: Assessment-Search or requisition-Notice under Section 143(2) is not necessary [S. 132, 143(2)]

Dismissing the appeal the Court held that under section 153A of the Income-tax Act, 1961, there is an assessment pursuant to search and requisition under section 132 and the procedure is completely dealt with by section 153A. The words in the Explanation to section 153A "save as otherwise provided in this section" are significant and cannot be ignored. The Explanation in the final analysis of the scheme of section 153A, does not in any manner expand the meaning including the requirement of section 143(2) of the Act.Hence in proceedings under section 153A, a notice under section 143(2) need not be issued.

E. Shamsudeen v. CIT (2022)447 ITR 750/ 209 DTR 440/ 325 CTR 232 (Ker)(HC)

S. 153A: Assessment-Search or requisition-Undisclosed income-Amounts credited to employees account-Admission by employees that the amount belong to the assessee-Peak and gross profit theory-Not accepted-Addition is held to be justified [S. 132, 133A]

Dismissing the appeal the Court held that the Revenue recorded sworn statements from these employees. The employees said that the amounts credited in their personal bank accounts belonged to the assessee. Confronted with the documents and the statements of his employees, the reply given by the assessee was that, at the distance of the time, when an enquiry was taking place, he was unable to recollect the details. The assessee offered these amounts and claimed to take the peak of the amounts and apply the gross profit. The assessing authority rejected the alternative explanation by the assessee and treated Rs.10,00,000 as an unproven loan and added it to the assessee's total income. The Tribunal rejected the assessee's case on the grounds that there was no evidence in support of the information offered by the assessee. The addition of Rs. 10,00,000 was justifiable. It had precisely summed up that the assessee gave an evasive reply and alternatively desired to calculate the peak of the amounts and apply the gross profit. There was no reason to be shown beyond the narrative or any infirmity in the approach. Consequently, the findings recorded on this behalf were to be sustained. As regards valuation of factory building the remand to CIT(A) is affirmed (AY. 2004-05 to 2010-11)

K. A. Rauf v. CIT (2022)446 ITR 421/ 215 DTR 13/ 328 CTR 920 (Ker)(HC)

S. 153A: Assessment-Search or requisition-Recording of satisfaction is not mandatory under section 153A-No abatement of concluded proceedings.[S. 132A, 153C]

.The Assessing Officer is empowered to assess or reassess the total income of six AY.s, i. e., the income which was returned in the earlier returns, the income which was unearthed during search and also any income which was not disclosed in the earlier returns or which was not unearthed during the search, by separate assessment orders, but completed assessments should be subject to the safeguards. As regards pending assessments only one assessment shall be made separately for each AY. on the basis of the income unearthed during search and any other material existing or brought on the record of the Assessing Officer. Even in the absence of any incriminating material abated assessments or reassessments could be done. The returns filed under section 139 of the Act gets replaced by the returns filed under section 153A(1) of the Act. Proceedings pending in appeal, revision or rectification shall not abate subsequent to initiation of section 153A proceedings. Further, recording of satisfaction under section 153A may not be necessary unlike section 153C of the Act which mandates recording of satisfaction.(AY. 2008-09 to 2013-14)

PCIT v. Delhi International Airport Pvt. Ltd (2022)443 ITR 382 (Karn)(HC)
PCIT v. GMR Hyderabad International Airport Pvt. Ltd (2022)443 ITR 382 (Karn)(HC)
PCIT v. GMR Infrastructure Ltd. (2022)443 ITR 382 (Karn)(HC)

S. 153A : Assessment-Search or requisition-No incriminating material was produced nor stated in the notice –Notice was quashed as the respondent has failed to specify the seized documents.[S.132 132A, Art, 226]

The assessee challenged the issue of show cause notice on the ground that no incriminating material was furnished to the assessee. The assessee challenged the notice on the ground that the respondent must state basis material seized must be furnished along with the notice for enabling for filing correct notice in pursuance of notice u/s 153A of the Act. On the facts the notice was quashed on the ground that nothing prevented respondent from mentioning in the notice the basis for issuing the notice under section 153A so that petitioner could comply with the same as prescribed.

Samson Maritime Ltd v. ACIT (2022) 209 DTR 476(Bom)(HC)
Underwater Service India (P) Ltd v. ACIT (2022) 209 DTR 476(Bom)(HC)

S. 153A : Assessment-Search or requisition-Excise Officials while conducting vehicle inspection at check post, found that assessee was carrying cash of Rs. 50 lakhs without any proper supporting documents-F.I.R. was registered and amount was also seized and deposited with Court of Judicial Magistrate First Class-Inspector of Police, Income-tax authorities had issued summons to assessee under section 131, seeking to explain source of said amount-Proceedings were initiated by the revenue Authorities-Petition was filed to hand over the cash seized to the tax officials-Petition was allowed [S. 132A, 132B, Criminal Procedure Code, 1973 S. 451,]

Excise Officials while conducting vehicle inspection at check post, found that assessee was carrying cash of Rs. 50 lakhs without any proper supporting documents. F.I.R. was registered and amount was also seized and deposited with Court of Judicial Magistrate First Class.Upon getting information from Inspector of Police, Income-tax authorities had issued summons to assessee under section 131, seeking to explain source of said amount. However, assessee failed to explain source of same properly, hence proceedings were initiated against him. Pursuant to a criminal miscellaneous petition before Magistrate, seized amount had been released in favour of assessee. The revenue also filed criminal miscellaneous petition before Magistrate Court under section 451 of the Cr.PC, which was dismissed. The revenue filed petition before High court. Court held that as per the provisions of Income-tax Act, assessee was bound to disclose source of seized amount before authorities and to pay tax, as per rates applicable, however, since no such exercise was done in this case, at instance of assessee, proceedings under section 132A or 153A were necessitated. Court held that where assessee was having in his possession, huge amount of cash, in violation of provisions of Income-tax Act and also failed to explain source of said cash, proper course to be adopted by Magistrate in whose custody said seized amount was deposited would have been to release said amount to revenue authorities so as to enable parties to undergo procedure contemplated under section 132A, 132B or 153A.Accordingly the petition was allowed and amounts shall be released to revenue for completing proceedings under section 132B or 153A of the Act.

UOI v. State of Kerala. (2022) 285 Taxman 677 / 443 ITR 117 / 215 DTR 407/ 327 CTR 467 (Ker)(HC)

S. 153A : Assessment-Search or requisition –Deemed dividend-No incriminating material-Addition cannot be made [S. 2(22)(e)]

Dismissing the appeal of the revenue the Court held that the completed assessments cannot be interfered with by Assessing Officer while making assessment under section 153A unless some incriminating documents are found in the course of search proceedings.

PCIT v. Gaurav Arora (2021) 133 taxmann.com 292 (Delhi) (HC)

Editorial : Notice is issued in SLP filed by the revenue, PCIT v. Gaurav Arora (2022) 284 Taxman 629 (SC)

S. 153A : Assessment-Search or requisition-In the absence of incriminating material merely on the basis of statement recorded of third person without providing an opportunity of cross examination-Addition cannot be made [S. 132(4), 153C]

Dismissing the appeal of the revenue the Court held that in absence of incriminating material found during search, assessment made under section 153A on basis of statement recorded under section 132(4) of a third person, without providing an opportunity to cross-examine witness and without following mandatory procedure under section 153C, was not justified.

PCIT v. Anand Kumar Jain (2021) 133 taxmann.com 288 (Delhi)(HC)
Editorial: Notice issued in SLP filed by the revenue; PCIT v. Anand Kumar Jain (2022) 284 Taxman 633 (SC)

S. 153A : Assessment-Search or requisition –No incriminating material-Addition cannot be made.[S. 132]

Dismissing the appeal of the revenue the Court held that the completed assessments cannot be interfered with unless some incriminating material unearthed during course of search which was not produced or not already disclosed or made known in course of original assessment.(AY. 2012-13)

PCIT v. Param Dairy Ltd (2021) 133 taxmann.com 147 (Delhi)(HC)
Editorial: Notice issued in SLP filed by the revenue; PCIT v. Param Dairy Ltd. (2022) 284 Taxman 378 (SC)

S. 153A : Assessment – Search or requisition- Undisclosed Income- Bogus Purchases from Hawala or Bogus dealers- Assessee not in possession of evidences/bills- Average ratio of bogus purchase to turnover 1%- Bogus purchase estimation on that basis- Additions justified .[S. 132]
The assessee was not in possession of the bills and other supporting evidence for purchases, the Commissioner (Appeals) observed that the average ratio of bogus purchases to the turnover was merely 1.0 per cent. and therefore, the bogus purchases were estimated. The Tribunal held that there was no infirmity in the orders of the lower authorities in confirming the addition on account of alleged bogus purchases. (AY. 2007-08 to AY. 2009-10)
Dy. CIT v. Wind World India Ltd. (2022)98 ITR 22 (Mum)(Trib)

S. 153A : Assessment – Search or requisition- Unexplained Income- Cash deposited in the bank account during demonetization- Cash sales and realization of trade debtors- Recorded in books of accounts- No adverse comments by investigation department- No inflated purchases or suppressed sales- Additions not tenable . [S. 69A]
The Assessing Officer accepted the trading results and had not doubted the opening stock, purchases, sales and closing stock as well as gross profit rate shown by the assessee. Therefore, the addition made by the Assessing Officer on the basis of surmises and conjectures was rightly deleted by the CIT(A). Furthermore, since the addition made by the Assessing Officer was deleted, the cross-objection filed by the assessee was allowed. (AY. 2017-18)

Dy. CIT v. Roop Fashion (2022)98 ITR 419 (Chd) (Trib)

S. 153A : Assessment – Search or requisition-Assessments not abating on date of search — No incriminating material – Addition cannot be made – Loss on sale of investments-Matter remanded. [S. 73]

Held that in respect of assessments not abating on date of search when no incriminating material were found addition cannot be made . With regard to loss incurred, the Assessing Officer was to determine the type of loss, speculative, non-speculative or business and allow it in accordance with the provisions of law.(AY. 2006-07 to 2009-10)

Raju Verma v. Dy. CIT (2022) 98 ITR 15 (SN.) (Dehradun) (Trib)

S. 153A : Assessment – Search or requisition-No incriminating material was found – Issue of shares to Foreign entities – Addition cannot be made as cash credits -Binding precedent - Decisions of the non-jurisdictional High Court are followed by the lower authorities, only in the absence of benefit of guidance by the jurisdictional High Court on that issue. [S. 68]

Held thatin the absence of recovery of any incriminating material, no addition can be made in the assessment proceedings. Decisions of the non-jurisdictional High Court are followed by the lower authorities, only in the absence of benefit of guidance by the jurisdictional High Court on that issue, on account of the persuasive effect of these decisions and on account of the concept of judicial propriety; mere pendency of the appeal, against a binding judicial precedent, in a higher judicial forum does not dilute, curtail or otherwise narrow down its binding nature. Followed , Mumbai Kamgar Sabha v. Abdulbahi Faizullbhal AIR 1976 SC 1455 , CIT v. Thana Electricity Supply Ltd. (1994) 206 ITR 727 (Bom) (AY.2009-10)

Luxora Infrastructure (P) Ltd. v. Dy CIT (2022) 220 DTR 65 / 220 TTJ 568 / (2023) 198 ITD 0713 (Mum)(Trib)

S. 153A : Assessment – Search or requisition- On money on sale of property – Loose sheets – Agricultural land – Undisclosed income - Found in the possession of buyers – Capital receipt – Admitted the receipt of on money – Cannot be treated as capital receipt – Addition is justified. [S. 2(14)(iii), 4, 132]

Held that theAssessee has admitted receipt of on-money on the sale of property during the course of search and post-search enquiries which is further fortified by the incriminating material found during the course of search., The contention of the assessee that the said amount is capital receipt, on account of sale of agricultural land was rejected . Addition was confirmed . The Tribunal also held that the Assessee has neither explained the loose sheets found during the course of search, which contain chit and finance business transactions nor reconciled total loans and advances outstanding as on date of the search and offered income from chit and moneylending business , the addition made by the AO towards the remaining undisclosed income from chit and finance business is sustained.(AY. 2017 -18)

A.Jhonkar v. Dy. CIT v. Johnkumar Trust (2022) 220 TTJ 187 (Chennai) (Trib)
Dy. CIT v. Johnkumar Trust (2022) 220 TTJ 187 (Chennai) (Trib)

S. 153A: Assessment – Search or requisition-Undisclosed income – Seized material – Set off Shortage of stock was given in the year such shortage was unearthed and not for earlier years - Concealed profits - No evidence was found in the course of search - Addition was deleted.[S. 132]

Held that there is no evidence to establish that the shortage of stock which was discovered on 1st Nov., 2017 i.e., the date of survey, was brought forward from the earlier years and therefore, the benefit of set off of the addition made on account of said shortage of stock can be given to the assessee only in asst. yr. 2018-19 i.e., the year in which such shortage was unearthed, and not in the earlier assessment years. Held thatquantum of salary paid to employees in a trading concern cannot be directly proportional to the profits earned and, therefore, AO was not justified in making addition on account of alleged concealed profits by taking the unrecorded payments made by the assessee, a trading concern, to its employees as the base and applying salary to net profit ratio for arriving at the figures of concealed profits.(AY .2017-18)

Agya Ram Manohar Lal v. ACIT (2022) 220 TTJ 300 (Chd) (Trib)

S. 153A: Assessment – Search or requisition-Assessments which do not abate — Can be interfered with only on basis of incriminating material or undisclosed income or property unearthed during Search -Time limit to issue notice under Section 143(2) has not expired – Assessing Officer is entitle to verify the income declared . [S. 143(2) 143(3)]

Held that for the assessment year 2001-02 the assessed income was offered by the assessee in response to notice under section 153A and for the other years the time limit to issue notice had expired at the time of search. Thus, the assessment for these years had not abated. In such a case, the additions that could validly be made by the Assessing Officer had necessarily to be based on some incriminating material as unearthed during the course of search operations. The Revenue had not placed on record any incriminating material which has led to the additions and disallowances. The additions and disallowances were unsustainable in the eyes of law.For the assessment year 2006-07, the assessee was subjected to search action on January 23, 2007 and the time limit to issue notice under section 143(2) had not expired. Therefore, the Assessing Officer was within his statutory right to examine and verify the income declared by the assessee.(AY.2001-02 to 2007-08)

V. Premalatha (Smt) v. ACIT (2022)100 ITR 432 (Chennai)(Trib)

S. 153A: Assessment – Search or requisition- Unabated assessment – No incriminating material was found – Addition cannot be made [S. 132, 143(3)]

Dismissing the appeal of the Revenue the Tribunal held that the assessment had attained finality and the proceedings for the assessment years had not abated , therefore fresh assessment proceedings were not justified when there was no incriminating material was found relating to the year under consideration . (AY. 2010-11 , 2011 -12)

ACIT v. N.M. Agro Pvt Ltd (2022) 100 ITR 482 (Delhi)(Trib)

S. 153A: Assessment – Search or requisition- Unaccounted cash transactions – Compensation received for selling shares - Assessing Officer had not conducted any independent enquiry or made any efforts to corroborate such unaccounted cash transactions with seized material addition was unjustified.[S. 4, 132]

Held that the Assessing Officer had made addition by merely relying on documents found during course of search conducted in third party premises . The Assessing Officer had not conducted any independent enquiry or made any efforts to corroborate said unaccounted cash transactions in respect of purchase and sale of shares and receipt of dividend, etc. with seized material .Further, seized material relied upon by Assessing Officer for making addition in

hands of assessee did not have any reference to name of assessee . Addition was delted . (AY . 2008-09 to 2011-12)

ACIT v. Anand Jaikumar Jain (2022) 215 DTR 309 / 218 TTJ 813 / [2023] 147 taxmann.com 125 (Mum)(Trib)

S. 153A : Assessment – Search or requisition-Unexplained money- Assessment of third party- Cash Deposits- Routed through books of accounts- Books of accounts not rejected - Additions made on mere conjecture not sustainable.[S. 69A]

The Tribunal held that during the course of the search, no incriminating material was found. The Assessing Officer had no sound reason to reject the contentions of the assessee. Complete relief granted to assessee. (AY. 2017-18)

Tripta Rani (Smt.) v. ACIT (2022)97 ITR 389 (Chad) (Trib)

S. 153A : Assessment – Search or requisition - Bogus Purchases -Additions made for bogus purchases in name of assessee's concern — Additions made to similar amounts in hands of assessee amounts to double addition .[S. 132]

In the matter where a search conducted under section 132 of the Act at the assessee's residential premises, it was noticed that he had indulged in obtaining bogus purchase bills from various bill traders,and the Assessing Officer had made additions towards similar amounts in the hands of the assessee on the ground that the assessee was the ultimate beneficiary of money siphoned out from the company, the Tribunal held that once the addition was made towards alleged bogus purchases in the hands of the assessee, no additions could be made to similar amounts in the hands of the assessee because it amounted to double addition. The Commissioner (Appeals) had rightly deleted the additions. Further, in the issue where an addition was made towards unaccounted cash found during the course of a search in the hands of the legal heir of the assessee and a similar addition had been made in the hands of the assessee, it was held that the Department had failed to controvert the finding of fact recorded by the Commissioner (Appeals) which was neither erroneous nor incorrect. There was no infirmity in the order of the Commissioner (Appeals) to delete the addition made towards unaccounted cash found during the course of search in the hands of the assessee. (AY. 2011-12 to 2014-15)

BGR Energy Systems Ltd. v. ACIT (2022)96 ITR 625 (Chennai) (Trib)
ACIT v. Sasikala Raghupathy (Smt.) (2022)96 ITR 625 (Chennai) (Trib)

S. 153A : Assessment – Search or requisition - Assessment of third person — Agricultural land at time of transfer and put to agricultural operations — Purchaser of land used for non-agricultural purpose not relevant in determining nature of aassets sold by aaassessee on date of sale – Sale consideration cannot be assessed as business income - Order of CIT(A) is affirmed . [S. 10(38), 28(i) , 45]

The Tribunal held that the lands were agricultural lands at the time of transfer, and the lands had been put to agricultural operations. Further, that the purchaser of the lands had used the lands for non-agricultural purposes had no bearing in determining the nature of assets sold by the assessee on the date of sale. The assessee had been disclosing agricultural income, though meagre, and this was accepted by the Department. Thus, it could not be said that there were no agricultural activities on the subject lands and merely because the assessee-company made a huge amount of profits could not be ground to treat the profits arising on the sale of agricultural land as "business income."The very object of holding the lands had changed, and this was demonstrated by the assessee company in the form of treatment given in the books of account by conversion of the lands held as stock-in-trade into investments. The material on

record would conclusively prove that the lands were agricultural lands held as investments. Therefore, the profits arising from the sale of land could not be brought to tax as a business adventure in the nature of trade. (AY. 2013-14)
ACIT v. Renaissance Cultivation LLP (2022) 96 ITR 665/ 219 TTJ 327/141 taxmann.com 252 (Pune)(Trib)

S. 153A : Assessment – Search or requisition- No notice was issued on original return filed- Assessment proceedings not pending on date of search — Addition is not valid [S. 143(1), 143(2)]
It was held that the return of income for the AY 2006-07 was filed by the assessee on October 30, 2006 and the return of income was processed under section 143(1) of the Act. No notice under section 143(2) of the Act was issued up to June 30, 2008, being the period laid down in the proviso to section 143(2) of the Act, for making the assessment. Therefore, the assessment proceedings stood completed and on the date of search, i. e., on November 23, 2010, the assessment for the AY 2006-07 was not pending. Therefore the assessment did not abate in terms of the second proviso to section 153A(1) of the Act. Thus, the scope of proceedings under section 153A of the Act had to be confined only to material found in the course of search. The additions been made by the Assessing Officer was with respect to share capital and share premium, and there was no reference in the assessment order that the addition was based on incriminating material. Since no material on the basis of which the addition had been made was found in the course of search, the additions made by the Assessing Officer in the order of assessment could not have been the subject matter of proceedings under section 153A of the Act. (AY. 2006-07)
Unified Infrastructure Pvt. Ltd v. ACIT (2022)96 ITR 62 (SN) (Delhi) (Trib)

Unified Developers Pvt. Ltd. v ACIT (2022)96 ITR 62 (SN) (Delhi) (Trib)

S. 153A: Assessment – Search or requisition- Settlement Commission -Assessment of third person —Double taxation - Long-term capital gains — Capital gains relating to assessee already disclosed and taxed in hands of firm, in which the assessee was partner, and accepted by Settlement Commission — Cannot be taxed again in hands of assessee. [S.10(38), 45 , 132, 153C, 245A(4), 245D]
The Tribunal held that the application for settlement in the case of Rohit Traders a firm in which assessee was a partner, had been accepted by the Settlement Commission, the long-term capital gains allegedly relating to the assessee already stood disclosed and taxed in the hands of R and, therefore, it could not be taxed again in the hands of the assessee. (AY.2014-15, 2015-16)
Radhika Goel (Smt) v. Dy. CIT (2022) 95 ITR 39 (Chd)(Trib)

S. 153A : Assessment – Search or Requistition -Seized material had not been corroborated – Addition was deleted.[S. 4 , Indian Evidence Act, 1872, S. 65B(4)]

There was no mention of the assessee name anywhere in the seized documents and none of the searched parties agreed that they have undertaken any cash transaction with the assessee. The AO had not conducted any independent enquiry or made any efforts to corroborate the seized pages or link it to assessee. The entire assessment has been made without bringing on record any evidence but merely relying on statements made by persons and AO's perceptions/presumptions. It was also held that the electronic data cannot be relied upon in

the absence of requisite certificate under Section 65B(4) of the Indian Evidence Act especially when the contents of the pen drive are disputed. (AY. 2008-09, 2009-10, 2010-11)
ACIT v. Anand Jaikumar Jain (2022) 215 DTR 309/218 TTJ 813/ (2023) 147 taxmann.com 125 (Mum) (Trib)

S. 153A: Assessment – Search or requisition – Search and seizure –Wrongly adopting the figure of unaccounted assets in place of the unaccounted capital offered by the assessee in the return of income- Deletion of addition was affirmed
Held that, the assessee has offered the cumulative amount of unaccounted capital to tax as undisclosed income in all the assessment years and the AO having duly accepted the same, he was not justified in making the impugned addition for one year only by adopting the figure of unaccounted assets as undisclosed income in the relevant assessment year in place of the unaccounted capital offered by the assessee in the return filed under S. 153A. (AY. 2013-14)
ACIT v. River Valley Flour Mills (P) Ltd. (2022) 220 TTJ 127/220 DTR 55 (Pat) (Trib)

ACIT v. Chandana Kothari (Smt) & Ors. (2022) 215 TTJ 729 /211 DTR 149 (Nag) (Trib)

S. 153A: Assessment – Search or requisition-Loose papers – Sale of scrap – Entries were for the financial year 2014 -15 – Assessee offered the income for the AY. 2015 -16 - Assessing Officer estimated the income in all units from the assessment years 2009 -10 to 2015 -16 -Addition was deleted- Share capital – Group companies – Sufficient source – Addition was deleted [S. 68]
Held that merely because certain loose papers were found from one unit of the assessee-company which showed that the assessee has received certain consideration in cash on the sale of scrap during one year, the AO was not justified in assuming that there was a cash component in all the transactions of sale of scrap made by the assessee in all its units in all the assessment years. though nothing was found during the search in other units. Held that the assessee company having received share capital from its group companies which have sufficient source of funds, the identity as well as creditworthiness of the investors stand proved, since all the transactions relating to investments were made through regular banking channel the genuineness of the transaction cannot be disputed by relying upon the contents of allegedly seized sips of papers which were never part of the assessment records; impugned additions made by the AO under s. 68 on the basis of unsubstantiated facts are not sustainable. Relied on PCIT v. Supreme Cylinders Pvt Ltd (ITA No. 465 of 2018) (AY. 2009- 10 to 2015 -16)

Uma Polymera Ltd. v. Dy. CIT (2022) 219 TTJ 47 / 217 DTR 353 (Mum)(Trib)

S. 153A: Assessment – Search or requisition- Cash credits – Share capital –Share premium - Burden discharged – Proviso to S. 68 inserted w.e.f. 1st April, 2013 is prospective in nature, application from AY . 2013-14 onwards - Addition was deleted [S. 56(2)(vib) ,68, 133(6)]

Held that the AO was not justified in making the impugned addition under S. 68 solely on the basis of inference drawn from the Investigation report of the Department and statements of certain persons recorded at the time of investigation which were not confronted to the assessee proviso to S. 68 inserted w.e.t. 1st April, 2013 is prospective in nature, applicable from asst. yr. 2013-14 onwards. Deletion of addition was affirmed . (AY .2013 -14 , 2007 - 08 to 2012 -13)

ACIT v. Suryadev Alloys & Power (P) Ltd. (2022) 217 TTJ 537 (Chennai) (Trib)
ACIT v. BMP Steels (P) Ltd (2022) 217 TTJ 537 (Chennai) (Trib)

S.153A : Assessment – Search or requisition – Assessment –Limitation - The JCIT granted the approval u/s. 153D on 30/12/2016 does not prove that the order has been passed on 30/12/2016 and hence the assessment order purported to have been passed on 30/12/2016 is barred by limitation and therefore quashed. [S. 153, 153D 153B]

Held that, in the absence of any documentary evidence on record to show that the impugned assessment order under S. 153A of the Act purportedly passed on 30/12/2016 which was dispatched by the Department only on 07/01/2017 was in fact passed on 30/12/2016 before the expiry of the limitation period, the same is barred by limitation. (AY 2009-10 to AY 2015-16)

Sujata Panda v. ACIT (2022) 220 TTJ 899/ 220 DTR 185 (Ctk) (Trib.)

S. 153A : Assessment-Search or requisition-Unexplained expenditure-Purchase of land-Addition was held to be justified.[S. 132]

Held that the adjacent land situated to the land in question sold by the vendors is for Rs. 5,00,000/-per acre which has not been disputed neither the assessee was unable to give any convincing reply to show how the vendor sold the adjacent land for Rs. 5,00,000/-per acre. Addition was confirmed.
(AY. 2013-14 to 2015-16)

ACIT v. B.G. Channappa (2022) 64 CCH 56 / 216 TTJ 963/ 214 DTR 74 (Bang) (Trib)

S. 153A: Assessment-Search or requisition-Hard disc-Undisclosed income-No corroborative evidence such as bogus purchase bills or bogus expenses and unexplained investment found during search-Addition is held to be not valid.[S. 132, 145(2)]

AO assessed income at the net profit shown in the hard disc data as the actual profit and rejected the books of accounts u/s 145(2) of the Act. No addition in the previous assessment year under the identical facts and circumstances, violation of Rule of Consistency. No corroborative evidence such as bogus purchase bills or bogus expenses and unexplained investment found during search. Order of the CIT (Appeals) deleting the addition is affirmed. (AY. 2010-11))

ACIT v. Lepro Herbals (P.) Ltd. (2022) 94 ITR 225 / 216 TTJ 782 / 215 DTR 233 (Delhi) (Trib.)

S. 153A: Assessment-Search or requisition-No addition can be made in the absence of an incriminating material even if return of income is processed u/s 143(1) of the Act.[S. 132, 143(1)]

Held that no addition can be made in section 153A proceedings in the absence of an incriminating material even if return of income is processed u/s 143(1) of the Act.(ITA.No. 541/ Mum/ 2021 dt 16-2 2022)

DCIT v. Anjana Modi (2022) The Chamber's Journal-March-P. 114 (Mum) (Trib)

S. 153A : Assessment-Search or requisition-Addition made to the income of the assessee based on the documents viz. 'loose sheets' and 'scraps of paper' seized during a search conducted on a third party-Inadmissible evidence-Addition is not valid [S. 132]

Additions were made to the income of the assessee on the basis of certain documents seized during search on the premises of a third party where the name of the Assessee was mentioned in such seized documents. The AR submitted that the documents bore no signature of the assessee and that the documents were not account of the assessee in the books of accounts of the third party but only some rough tabulation of noting's, therefore such unauthentic 'computerized prints have no evidence value and therefore the addition should be deleted. The department did not contradict that there is no copy of the account of the assessee in regular books of accounts of the third party. Therefore, the ITAT followed the decision of Common Cause and Others v. UOI (2017) 394 ITR 220 (SC) wherein it has been held that 'loose sheet' and some other stray material could not be considered as admissible evidence against the third party. (AY. 2012-13)

MGV Jain Jewellers Pvt. Ltd. v. ITO(2022) 94 ITR 191 (Delhi) (Trib)

S. 153A: Assessment-Search or requisition-No incriminating documents found-No assessment was pending-long term capital gains-Addition is not justified.[S. 45, 143(3)]

Allowing the appeal the Tribunal held that the original assessment under section 143(3) of the Act, stood completed on the date of the search and no assessment proceedings were pending as regards the assessment year 2007-08. No incriminating material was recovered during the course of search concerning the addition made on account of long-term capital gains. It is well-settled law that seized material must have some nexus or relevance to the additions sought to be made and must be relevant for the belief formed regarding income having escaped assessment. Therefore, the invocation of section 153A of the Act for assessment year 2007-08 was without any legal basis as there was no incriminating material qua the assessment order under appeal. The Assessing Officer was not justified in making the addition on account of long-term capital gains.(AY.2007-08)

Brij Kishore Kochar v. ACIT (2022)93 ITR 64 (Trib) (SN)(Delhi) (Trib)

S. 153B : Assessment - Search - Time limit - DNCR not handwritten in assessment order- Order was not passed within limitation period - Order liable to be quashed as beyond limitation [S.132, 153D]

A search and seizure was conducted on the premises on the assessee on 28.5.2014 but the order of assessment was passed only in 2017. Having failed to type the DNCR on the assessment order and also since the issue of limitation is covered in favour of the assessee by the jurisdictional high court holding that in the absence of dispatch date showing the issue of order of assessment the order is beyond limitation and the burden is on the revenue to show the same.(AY. 2009-2010 to 2015-2016)

Sujata Panda v. ACIT (2022) 220 TTJ 899 (Cuttack) (Trib)

S. 153C : Assessment-Income of any other person-Search-Unexplained investment-Share transaction-No incriminating material was found in the course of search-Addition cannot be made.[S. 69]

Dismissing the appeal of the Revenue the Court held that in absence of any incriminating material found during search, no addition could be made in assessment under sections 153C of the Act.. (AY. 2008-09)

PCIT v. Sunway Realtech (P.) Ltd. (2022) 289 Taxman 543 (Delhi)(HC)

S. 153C : Assessment-Income of any other person-Search-Validity-Jointly conducted-Three persons and firm-Firm would not require to be dealt with under section 153C, but would be under section 153A; however, if material collected in search against such person is used against other person, then proceeding can be taken under section 153C and not under section 153A-Matter remanded.[S. 153A, Art, 226]

Court held that material collected pursuant to search jointly conducted against three persons and a firm was required to be dealt with under section 153A, and not under section 153C.If material collected in search against such person is used against other person, then proceeding can be taken under section 153C and not under section 153A. Matter was to be remanded back for consideration, if material collected in case of search upon individuals could be considered in hands of firm without following mandate of section 153C of the Act. (AY. 2014-15 to 2017-18)

SRS Mining v. UOI (2022) 328 CTR 510 / / 217 DTR 141 / 141 taxmann.com 272 (Mad)(HC)

S. 153C : Assessment-Income of any other person-Search-Books of account-Loose sheets and diaries do not Constitute to books of account-Assessment based only on evidence available in loose sheets and diaries-Not valid-Transfer of case-Assessee must be given opportunity to be heard-Existence of alternate remedy-Not an absolute bar on issue of Writ [S. 132, Indian Evidence Act, 1872, S. 34, Art, 226]

On writ allowing the petition the Court held that writ petition was maintainable although the assessee had an alternate remedy because the question raised involved a consideration of violation of principles of natural justice. That as no opportunity was provided to the assessee as required under section 127 of the Act, the transfer of case was not valid. That the action taken by the Department against the assessee based on the material contained in the diaries and loose sheets were contrary to the law. In that view the notices issued under section 153C of the Act, based on the loose sheets and diaries were contrary to law, and set aside.(AY.2012-13 to 2018-19)

Sunil Kumar Sharma v. Dy. CIT (2022)448 ITR 485/ 220 DTR 241 (Karn)(HC)
Kandaswamy Rajendran v. Dy. CIT (2022)448 ITR 485 // 220 DTR 241 (Karn)(HC)

S. 153C : Assessment-Income of any other person-Search-Violation of principle of natural justice-Responded to notice-Order was set aside [S.132, 142(1), Art, 226]

A notice under section 153C was issued calling upon assessee to submit return in accordance with section 140 within one day.On very next day notice under section 142(1) had been issued calling upon assessee to respond within two days. Assessee, notwithstanding short time, responded by way of a trail mail, however order under section 153C had been made by saying that assessee had not responded to section 142(1) notice of the Act. On writ allowing the petition the Court held that section 142(1) notice and response to same is so integral a part of assessment that it cannot be given a go-by and violation of same certainly qualifies as violation of principle of natural justice. Further since impugned orders proceeded with assessment saying that assessee had not responded though assessee had responded notwithstanding short time given for responding, there was violation of principle of natural justice and, therefore the order was set aside. (AY. 2017-18, 2018-19, 2019-20) (SJ)
PCIT v. PraveenKumar Pathi. (2022) 286 Taxman 458 (Mad)(HC)

S. 153C: Assessment - Income of any other person – Search- Search on 27-10-2014- Seized Ledger account of transactions of person in respect of whom search conducted forwarded with satisfaction note to Assessing Officer of Assessee — Cannot be said to be belonging to assessee- Order is void ab initio -Pre amended law to be applied . [S. 132]
Held that the pre-amended law under section 153C of the Act needed to be applied since the date of search was on October 27, 2014, and that date had to be considered to be relevant date for the purpose of applying the provisions of section 153C(1) of the Act, even though the satisfaction note was handed over to the Assessing Officer of the assessee on March 15, 2017. The essential jurisdictional fact for initiation of assessment under section 153C of the Act according to the pre-amended section 153C of the Act was that the Assessing Officer of the person in respect of whom search was conducted should be able to return a finding of fact that the seized material belonged to the assessee and thereby rebutting the presumption that documents seized belongs to searched party. On perusal of the satisfaction note, though the Assessing Officer said that the seized documents belonged to the assessee, these were merely ledger accounts of the assessee maintained by the person in respect of whom search was conducted in its books, i. e., Nalini J. Vyas . Therefore, the satisfaction note prepared at the first stage by the Assessing Officer of the person in respect of whom search was conducted in respect of the assessee for initiation of proceedings under section 153C of the Act did not satisfy the requirement of the law and consequently all actions taken pursuant thereto by the Assessing Officer of the assessee was void ab initio.That all the quantum assessments under section 153C of the Act pertaining to the assessment years 2010-11, 2011-12 and 2012-13 were to be quashed. In the light of quashing the assessments framed under section 153C for the assessment years 2010-11, 2011-12 and 2012-13, the penalty levied based on those assessments, had to fall. Therefore, the penalty for all the appeals needed to be cancelled.(AY.2010-11 to 2012-13)
Nalin Vyas v . ITO (2022)98 ITR 680 Mum) (Trib)

S. 153C : Assessment - Income of any other person - Search – Undisclosed income – Retraction –Retraction statement is held to be valid -No incriminating material – Capitalisation fee - Extrapolation of addition in the previous year or subsequent year – Addition was deleted – Validity of assessment – Not raised before the Assessing Officer or CIT(A)- Application under Rule 27 was dismissed . [S. 132(4) 143(2), 292C , ITATR. 27 .]

Dismissing the appeal of the Revenue the Tribunal held that all the key employees of the assessee, an educational trust, having retracted from their statements recorded under S. 132(4) by filing affidavits deposing that the search officers recorded the statements contrary to the replies given by them, said statements have no evidentiary value. in the absence of any independent corroborative evidence, to come to the conclusion that the assessee has been receiving capitation fees from the students of its institutions, addition was not sustainable. Seized torn pieces of paper pasted on another paper in haphazard and disjoint manner bearing some names and figures which cannot be correlated with each other cannot be treated as incriminating material suggesting that the assessee has been accepting capitation fee. In the absence of any incriminating material suggesting undisclosed income, there is no question of extrapolation of addition in the previous year or subsequent year. Order of CIT(A) deleting the addition was affirmed .Application under Rule 27 was filed challenging the validity of the proceedings under section 153C of the Act was dismissed as the issue was not raised before the Assessing Officer or CIT(A) and the assessee has filed the letter stating that they will not raise any technical grounds in the appeal . (AY. 2005 -06 to 2011 -12)

Dy. CIT v. Shikshana Prasaraka Mandali Sharda Sabhagruha (2022) 219 TTJ 518 (Pune)(Trib)

S. 153C : Assessment - Income of any other person – Cash credits - Additions on account of unexplained credits- Absence of any contradictory material- Additions affirmed by CIT (A) justified. [S. 68, 153A]

The Tribunal held that since there is no contradictory material available on record, the order passed by the CIT (A) was justified. (AY. 2003-04, 2004-05, 2007-08).

Amit Sanap v . Dy. CIT (2022)97 ITR 19 (SN) (Mum) (Trib)

S. 153C : Assessment - Income of any other person - Search – No incriminating material was found - Changing head of income from business income to income from other sources — Addition is not sustainable- Binding precedent – Pending of SLP- Ratio of High Court decision has to be followed . [S. 132]

Dismissing the appeal of the Revenue the Tribunal held that the Assessing Officer has not referred to any incriminating material found during the search. In this view of the matter, the Commissioner (Appeals) was correct in holding that the addition was not sustainable. The fact that the Department had filed a special leave petition against the decision of the High Court in Kabul Chawla did not warrant not following its ratio. Order of CIT(A) is affirmed .(AY.2003-04, 2004-05)

Dy. CIT v. Apoorva Extrusion P. Ltd. (2022)100 ITR 7 (SN) (Delhi) (Trib)

S. 153C : Assessment - Income of any other person – Search - Satisfaction note mentioning incriminating evidence- Not relating to relevant assessment year - Beyond jurisdiction- Addition is not valid . [S. 142(1), 143(2)]

The Tribunal held that the assessment proceedings were on extraneous facts and evidence other than those referred to in the satisfaction note and which were basis for issuing notice under section 153C of the Act. The incriminating material in regard to the assessee has to pertain to the AYs in question. The authorities below were not justified in making assessment, not based upon incriminating material mentioned in the satisfaction note and thus acted beyond jurisdiction and scope of section 153C / 143(3) of the Act. Order was quashed . (AY. 2013-14)

Heaven Suppliers Pvt. Ltd. v. ACIT (2022) 96 ITR 4 (SN) (Delhi) (Trib)

S. 153C : Assessment - Income of any other person - Search - Interest Paid on post-dated cheques in cash outside books of account — No documents belonging to assessee was found and seized — Interest on Post-dated cheques to be deleted. [S. 132]

The Tribunal held that during the search on the third party, certain documents belonged to the third party and some of its group companies were seized, but no document belonged to the assessee were found and seized as the provisions of section 153C were not invoked in the assessee's case. Therefore, the addition made on account of post-dated cheques interest were to be deleted. (AY.2006-07, 2007-08)

Rainbow Promoters (P.) Ltd. v. ACIT (2022)95 ITR 232 (Delhi)(Trib)

S. 153C : Assessment - Income of any other person - Search – Documents neither belonged to Assessee nor was incriminating in nature –Proceedings invalid [S. 132]

Assessment under section 153C was made upon the Assessee based on two documents found during the course of search action upon a third party. It was observed that the first document did not belong to assessee; further, there was no date or period stated in the said document to which the alleged transaction stated therein pertained. The other document was merely a ledger of a party recorded in the books of Assessee.

Held that jurisdiction under section 153C can be invoked only when the AO of the search party was satisfied that there was asset or document found during the course of search belonged to another assessee; and the Assessee of such other Assessee is satisfied that such asset/document found was incriminating in nature. Since the first document did not 'belong' to Assessee; section 153C cannot be invoked based on such a document. Similarly, the other document was merely a copy of a ledger account already recorded in books of Assessee; hence it cannot be considered to be incriminating in nature. Such a document having no bearing on determination of income cannot be used for assuming jurisdiction under section 153C. Further, as the said ledger pertained to preceding year provision under section 153C cannot be resorted for year under consideration; reliance was placed on the decision of Hon'ble Supreme Court in the case of CIT v. Sinhgad Technical Education Society(2017) 397 ITR 344 (SC) where it was held that it is a jurisdictional requirement for invoking section 153C of the Act that the incriminating material should pertain to that particular year in which it is sought to be invoked.

Considering the above, Hon'ble ITAT held that proceedings which were based on documents which neither belonged to Assessee nor were incriminating in nature – were not sufficient to involve provision of section 153C; hence considered invalid. (AY. 2007 -08 to 2010 -11)
Neesa Technologies Pvt. Ltd. v. DCIT (2022) 217 TTJ 649/ 214 DTR 172 (Ahd)(Trib)

S. 153C : Assessment - Income of any other person - SearchDevelopment and construction of real estate- No incriminating material - The statement of the persons of Lodha group based on the electronically retrieved data - Addition based on such retrieved data, not sustainable, Addition was deleted. [S. 132(4), Evidence Act , 3, 22A, 45A, 62, 115, S. 65B , Information Technology Act, 2000 , S. 2, 59, 65A, 65B, 79A,]
The search action carried out at the premises of one Lodha group . Books of accounts, documents, loose sheets and the cash were seized . Statement on oath u/s 132(4) of the Act of Shri Abbhinandan Lodha of Lodha group was recorded wherein voluntary disclosure of income Rs. 199.80 Crores was made in the hands of various entities of Lodha Group including the assessee Company . Subsequently, the statements of other employees of Lodha Group were also recorded . The assessee is in the business of development and construction of real estate, a limited Company, being an artificial judicial person having its separate identity . The Hon'ble ITAT found that there is no mention to any specific material seized from the premises of Lodha Group corresponding to the assessment year under reference, belong to the assessee Company . The statements recorded of various persons are neither the employees nor the Director of the assessee Company . The term Lodha Group cannot be used against the assessee Company without identifying the specific material belonging to Following the decision of in the case of CIT v. Sinhgad Technical Education Society (2017) 297 CTR 441 / 156 DTR 161 (SC) the assessment completed u/s 153C is set aside . Tribunal also held that the statement of the persons of Lodha Group was based on the electronically retrieved data and the provisions of section 65A of the Evidence Act and Information Technology Act, 2000 are not complied with , addition were deleted. (AY. 2011-12)
Simtools (P) Ltd. v. Dy. CIT (2022) 219 TTJ 887 (Mum)(Trib)

S. 153C : Assessment - Income of any other person - Search – Concluded assessment did not abate – Assessment transferred to Mumbai -Notice of reassessment issued by Kolkata Officer - Thereafter — Null and void .[S.115JB , 143(3), 147 , 148]
Held that when the jurisdiction of the assessee had been changed from Kolkata to Mumbai by order under section 127(2) of the Act dated September 30, 2014 by the Commissioner, the Kolkata Assessing Officer could not have issued notice under section 148 of the Act on October 13, 2014 for the AY. 2008-09. Hence, the notice was without jurisdiction and accordingly null and void. Tribunal also held that concluded assessment did not abate . *(* AY. 2008-09)
Essel Mining and Industries Ltd. v. Dy. CIT (2022) 98 ITR 93 (SN)(Mum) (Trib)

S. 153D : Assessment-Search-Approval-Order passed by AO without due approval from supervisory authority-Order was quashed [S. 142(1), 153A]

In the instant case approval u/s 153D granted prior to completion of the assessment proceedings was granted mechanically to meet the requirements of law, in spite of the fact that some defects and discrepancies were found in draft Assessment Order. The said draft order was passed with observations that the AO will pass the assessment order only after making verification, necessary inquiries and investigations in the light of suggestions made.

The AO after issuing the notice u/s 142(1) of the Act, immediately, after one day passed the assessment Order. On Appeal, the Tribunal held that the final Assessment order passed, which is not in accordance with the law, and without due approval as per mandate of S.153D, is void and bad in law. (AY.2011-12, 2012-13)
Neelachal Carbo Metalicks (P) Ltd.v. ACIT (2022) 216 TTJ 201/ 211 DTR 76 (Cuttack)(Trib.)

S. 154 : Rectification of mistake –Expenditure on account of stores and spares-Omission to make addition in the assessment order-Income assessed as income from other sources and not as business income-Rectification is held to be valid [S. 28(1),37(1) 56]

Affirming the order of the Tribunal the Court held that the assessee had not been carrying on any manufacturing activity for the assessment year 2004-05, and the rental income received by the assessee for that year could not be treated as business income. In view of the finding, the disallowance of the expenditure on stores and spares by the Assessing Officer was correct. The omission of the Assessing Officer to make the addition while computing the total income was liable to be rectified. The order of rectification was valid On appeal Honourable Supreme Court affirmed the order of High Court.(AY.2004-05)

PTL Enterprises Ltd. v Dy. CIT (2022)443 ITR 260/ 326 CTR 858/ 286 Taxman 564 (SC)
Editorial: Decision in PTL Enterprises Ltd. v Dy. CIT (2021) 439 ITR 365/(2022) 212 DTR 404 / 326 CTR 282(Ker)(HC) affirmed.

S. 154 : Rectification of mistake-Mistake apparent from the record-Appeal-Refusal to consider circular-Writ petition was dismissed [S. 246A,Art, 226]
There was held to be no merit in the contention of the assessee that the refusal to consider Circular No. 6 of 2016 amounts to a mistake apparent from the record which is to be rectified in proceedings under s. 154. As submitted by the counsel for the Revenue, the assessee had raised the very same issue in the rectification application as well as in the appeal filed against assessment order which was pending consideration before the appellate authority. The contention of the assessee in the rectification application touched on the merits of the grounds raised in the regular statutory appeal filed against the assessment order being the applicability of the circular and whether the assessing authority went wrong in disregarding the CDT circular are grounds raised in the appeal by the assessee. This question required adjudication in the appeal by hearing parties on questions of facts and law. Therefore, the issue raised in the application was not held to be a mistake apparent from the record which was to be rectified in proceedings under s. 154. The writ petition was accordingly dismissed. However, it was made clear that the statutory appeal would be considered and decided by the appellate authority in accordance with the law, untrammelled by any observations in orders rejecting the rectification petition.
Equity Intelligence India (P) Ltd. v. DCIT (2022) 324 CTR 563 / 209 DTR 412 (Ker)(HC)

S. 154 : Rectification of mistake-Recording of satisfaction-No error apparent on face of record-Rectification order not valid [S. 14A, R. 8D]

Dismissing the appeal of the Revenue the Court held that the Assessing Officer had to examine the assessee's claim with regard to expenditure incurred for earning exempt income and record satisfaction, more particularly, when he had not agreed with the disallowance claim under section 14A. However, such expenditure which had been incurred in respect of other income which had to be treated as part of the total income had to be considered under section 14A(2) of the Act read with rule 8D of the Income-tax Rules, 1962, but suo motu disallowance under section 14A of the Act made by the Assessing Officer was unwarranted. Recording of satisfaction by the Assessing Officer under rule 8D(2) of the Rules is mandatory. Therefore, invoking section 154(2) by the Assessing Officer to rectify the assessment order was untenable since there was no mistake apparent on the face of the record to invoke the proceedings under section 154 of the Act. Order of Tribunal affirmed.(AY.2014-15)

PCIT v. Mphasis Software and Services (India) Pvt. Ltd. (2022)445 ITR 468 (Karn)(HC)

S. 154 : Rectification of mistake-Setting Off of unabsorbed losses of earlier years-Rectification of order in accordance with supreme court ruling-Law laid down by Supreme Court binding. [S. 80HHC]

Dismissing the appeal the Court held that an order contrary to law declared by the Supreme Court in Ipca laboratory ltd. v. Dy.CIT (2004) 266 ITR 521 (SC)) would constitute an error apparent on the face of the record. Therefore, the order passed by the Assessing Officer exercising his jurisdiction conferred under section 154 as affirmed by the appellate authorities did not warrant interference..(AY.2001-02)

Lakshmi Mills Co. Ltd. v. ACIT (2022)441 ITR 594 (Mad) (HC)

S. 154 : Rectification of mistake-Violation of principle of natural justice-Not responding to notices-Last notice did not give sufficient time reply-Writ is not maintainable [S. 142(1), 143(3), Art, 226]

Dismissing the petition the Court held that though the last notice issued was on March 12, 2021, requiring it to reply on March 14, 2021, which stricto sensu might not be a reasonable or sufficient period to submit a reply, it could not be viewed in isolation or dehors the past conduct of the assessee. Considering the repeated failure of the assessee to respond to any of the six prior notices issued, the assessee could not claim the benefit of violation of principles of natural justice. Court also observed that Article 226 of the Constitution of India is not meant to short circuit or circumvent statutory procedures. It is only when the statutory

remedies are entirely ill-suited to meet the demands of extraordinary situations that the court should interfere under article 226, especially in matters of taxation. The court would refrain from interfering where alternative and efficacious statutory remedies are available to the assessee under the Income-tax Act, 1961.Violation of principles of natural justice has to be viewed with reference to the facts of each case. A person who has not responded to any of the notices issued in the past cannot, without anything more, turn around and complain that in the last notice issued he was not granted reasonable time to respond, especially when such a request for time is not even sought as a reply to the last notice. Directed to pursue the alternative remedy.(AY.2018-19)

Chams Branding Solutions India Pvt. Ltd. v.Dy. CIT (2022) 440 ITR 602/ 209 DTR 444/ 324 CTR 119 / 284 Taxman 548 (Ker)(HC)

S. 154 : Rectification of mistake-Mistake apparent from the record-Set-off of loss-Opinion of Audit party on a point of law-Manner of set off-Not a mistake apparent from the record-Rectification order was set aside-The order rejecting the application for settlement under the Direct Tax Vivad Se Vishwas Scheme, and to grant a certificate to the in respect of the tax arrears in accordance with law. [Direct Tax Vivad Se Vishwas Act, 2020, 5((1), 5(3), Art, 226]

On a writ petition challenging the rectification order passed under section 154 of the Income-tax Act, 1961 dated February 15, 2021, passed by the Deputy Commissioner during the pendency of the assessee's application for settlement of disputed tax under the Direct Tax Vivad Se Vishwas Act, 2020 and also seeking a direction to reconsider its application for settlement of disputed tax under the 2020 Act. The Court held that there was no mistake apparent in the computation of raised by the audit party was not a mistake apparent from the record, which could be corrected under section 154 of the 1961 Act, but an opinion in law on the manner in which set-off of business losses was to be permitted. The Court also held that on the facts, the bar of the provision of section 5 of the 2020 Act was not attracted. The order rejecting the assessee's application for settlement under the Direct Tax Vivad Se Vishwas Scheme, on the ground that the tax liability was not ascertained was set aside and the application was restored to the Assessing Officer as on December 28, 2020 to determine the amount payable by the assessee in accordance with the provisions of the 2020 Act and to grant a certificate to the assessee in respect of the tax arrears and amount payable in accordance with law. Followed, T.S Balaram, ITO v.Vollkart Brothers (1971) 82 ITR 50 (SC), Indian and Eastern Newspaper Society v.CIT ((1979) 119 ITR 996 (SC) (AY.2017-18)

Ambarnuj Finance and Investment Pvt. Ltd v. DCIT(2022) 220 DTR 142/ (2023) 450 ITR 40 (Delhi)(HC)

S. 154 : Rectification of mistake-Book profits-Amounts disallowed under Section 14A cannot be added back to book profits-Debatable issue rectification order is not valid [S. 14A, 115JB]

Held that amounts disallowed under section 14A cannot be added to the book profits computed under section 115JB. Court also held that the invoking of section 154 would be untenable when there is no mistake apparent on the face of the record, i. e., when the matter requires adjudication upon an issue which is a debatable issue.(AY. 2013-14)

PCIT. v J. J. Glastronics Pvt. Ltd. (2022)446 ITR 712 (Karn)(HC)

S. 154 : Rectification of mistake-Refund along with interest-CBDT instruction-Direction issued to dispose the application within six weeks by way of reasoned order and issue refund if any along with interest within said time.[S. 119, 244A, 245, Art, 226]

The aassessee moved an application on 8-7-2021 to rectify the errors in granting credit and calculating interest u/s 234B and 244A of the Act. In spite of reminders the application was not disposed. In terms of section 154(8) the time limit has expired on 31-1 2022. The assesse filed writ petition seeking direction to the Department to decide the rectification dated 8-7-2021.Allowing the petition the Court held that the CBDT Instructions No. 2/ 2013 (F.No 225 /76/2013 /ITA.II) dated 5-7 2013 and letter [F.No 225 / 148 / 2015-ITA-II], dated 5-7-2015 stipulated the AO to strictly follow the time limit of 6 months as per section 154(8) of the Act for disposing of rectification applications. Similar directions were also given in Nortel Networks India International Inc. v.ACIT (WPC 12236 /2021 and Cheil India Pvt Ltd v.Dy.CIT (WPC 11683 /2021). Accordingly the court directed the Department to decide the rectification application u/s 154 within 6 weeks, by way of reasoned order and issue refund if any along with interest within said time.(WP (C) 3145 of 2022 dt. 21-2-2022)(AY. 2014-15)

Nokia India Pvt Ltd v. ACIT(2022) The Chamber's Journal-March-P. 325 (Delhi)(HC)

S. 154 : Rectification of mistake-Cash Credits-Rejection of rectification was held to be valid.[S. 40((a)(ia), 69, Art, 226]

The assessment was completed u/s 143(3) of the Act. The Assessing Officer made two additions.ie. unexplained cash credits under section 69 read with 115BBE of the Act and on account of lack of information regarding tax deducted at source u/s 40(a)(ia) of the Act. The Assessee moved application u/s 154 of the Act. The Assessing Officer rectified the addition made u/s 40(a)((ia) of the Act and confirmed the addition u/s 69 of the Act. The assessee filed writ petition against the rejection order u/s 154 of the Act. Dismissing the writ petition the Court held that the two issues raised by the assessee for rectification had been gone into by the assessing authority. While on the issue pertaining to unexplained cash credit and consequently the addition under section 69 of the Act the view taken was that this was not a mistake apparent on the face of the record and therefore, rectification under section 154 of the Act was not warranted. The disallowance under section 40(a)(ia) of the Act had been rectified. The order of rectification was valid.(AY. 2017-18)

MS Educational and Welfare Trust v. ACIT (2022) 444 ITR 310 (Telangana)(HC)

S. 154 : Rectification of mistake -Mistake apparent from the record - Income from house property — Interest on loan — Rectification Of mistake is held to be allowable . [S. 143(1)]

Held that the assessee had explicitly filed the details as to the calculation in the Income-tax return as well as income from house property. At both the places, the income chargeable under the head "House property" showed a similar amount .Certificate issued from the bank is also filed . The Assessing Officer is directed to allow the claim of the assessee. (AY. 2018-19)

Devendra Prasad Tiwari v .ITO (2022) 98 ITR 35 (SN)(Jaipur) (Trib)

S. 154 : Rectification of mistake -Mistake apparent from the record - Non-Resident – Wrong reporting – Deduction of tax at source — Credit for tax deducted at source is to be allowable as eligible assessee- Matter remanded - DTAA- India -USA [S. 143(1), Art. 12]

Held that according to the Double Taxation Avoidance Agreement between India and the U. S. A., the service rendered by the assessee did not specify the "make available" clause in article 12. For the AY. 2018-19 a similar adjustment, i. e., taxing a service receipt at 40 per cent. was levied by the Central Processing Centre, Bangalore in the case of assessee's group companies of Singapore and the U. K., and the rectification applications were allowed by the Central Processing Centre. Further, under article 12 of the Agreement the income in question was not chargeable to tax. The addition had been made only due to wrong reporting of income by the assessee which could not be sustained.That the assessee submitted that the assessee was eligible to claim credit for tax deducted at source. The issue was to be set aside and remanded to the Central Processing Centre, Bangalore with a direction to grant eligible credit for tax deducted at source in accordance with law.(AY. 2018-19)

Heidrick and Struggles Inc. v. Dy. CIT (2022) 98 ITR 67 (SN)(Delhi) (Trib)

S. 154 : Rectification of mistake -Mistake apparent from the record – Book profit – Order giving effect while framing assessment as per the direction of CIT(A) – Order time barred – Cannot be rectified [S.115JB , 143(3) , 250]

The assessment u/s 143(3) was completed on 21st March, 2014, the AO did not make any reference to S. 115JB or has given any working of S. 115JB either in the assessment order or the accompanying documents. While giving effect to the order of CIT(A) the Assessing Officer passed an order under section 154 assessing the income on book profit . The order of the Assessing Officer was affirmed by the CIT (A) . On appeal the Tribunal held that even if there was a mistake, the same could not be rectified while giving appeal effect-Since the remedy available to the Revenue had already become time-barred. (AY. 2012-13)

G .E. Conductors (P) Ltd. v. ACIT (2022) 220 DTR 345 / 220 TTJ 1052 (Amritsar)(Trib)

S. 154 : Rectification of mistake -Mistake apparent from the record - Computation of income and return together part of assessment record – Denial of exemption was not valid . [S.11, 12A, 143(1]

Held that the computation of income and return filed together formed part of the assessment record. There was material on record to support the claim under section 11 of the Act. Thus no new or fresh claim was being raised without revising the return. The mistake was one which fell under the definition of mistake apparent from the record and was liable to be

corrected without any requirement of a revised return. The Assessing Officer was to consider the rectification application of the assessee and the assessee's claim to exemption under section 11 of the Act in terms of the information available on record or to be further verified from record.(AY.2013-14)

Grih Kalyan Kendra Board v. ITO (2022)100 ITR 71 (Trib) (SN)(Delhi) (Trib)

S. 154: Rectification of mistake -Mistake apparent from the record- Commissioner (Appeals) - No power to review order without referring to any mistake- Exercise of power of rectification and allowing deduction not justified.[S.80IB(10) , 250)

The Tribunal held that the Commissioner (Appeals) had not pointed out the mistakes in the original order passed by him and without referring to any mistakes apparent from the record, had merely reviewed his own order in the garb of exercising power of rectification, which was not permissible under the law. Thus, the Commissioner (Appeals) had grossly erred exercising the power of rectification (AY. 2011-12, 2012-13)

Dy. CIT v. Kishor Shankar Garve (2022)97 ITR 49 (SN)(Pune) (Trib)

S. 154 : Rectification of mistake -Mistake apparent from the record - Cash payment exceeding prescribed limit – Rectification order of the Assessing Officer was set aside .[S. 40A(3) , R.6DD]

Held that since disallowance under section 40A(3), even in a case where payments had been made by assessee in cash beyond prescribed limit, could not validly be made by invoking provisions of section 154 order passed by Assessing Officer could not be sustained . Accordingly the order was set aside .(AY. 2013-14)

Poonam Mittal (Smt.) v. ITO (2022) 215 TTJ 29 (UO) / 138 taxmann.com 380 (Amritsar) (Trib)

S. 154 : Rectification of mistake -Mistake apparent from the record – Audit report - Form No 10CCB –Not filed along with return – After intimation up loading the Form – Rejection of rectification application was not valid .[S. 80IB, 139 , 143(1), Form No 1OCCB)

The assessee's claim under section 80-IB of the Income-tax Act, 1961 was rejected by the authorities for the reason that the audit report in form 10CCB was not filed along with the return of income and was only filed after receipt of intimation under section 143(1) . The assessee filed rectification application under section 154 after uploading form 10CCB but this was rejected by the Central Processing Centre. The Commissioner (Appeals) rejected the assessee's appeals holding that there was no mistake apparent from record. On appeal the Tribunal held that the Central Board of Direct Taxes Circular No. 689, dated August 24, 1994 [1994 209 ITR (St.) 75), directed officers to allow rectification under section 154 where the audit report or other evidence could not be filed with the return of income but was filed later. Therefore, the application under section 154 was to be allowed.(AY.2017-18, 2018-19)

Saraswati Sheet Grah v. Dy. CIT (2022)97 ITR 117 (Lucknow)(Trib)

S. 154 : Rectification of mistake -Mistake apparent from the record - Industrial undertakings – Audit report not filed with return of income-Mistake rectified subsequently- Circular directing Assessing officers to allow rectification- Rectification application cannot be rejected [S.80IB , 143(1) , Central Board Of Direct Taxes Circular No. 689, Dated 24-8-1994]

The Tribunal held that the Central Board of Direct Taxes Circular No. 689, dated August 24, 1994 ([1994 209 ITR (St.) 75), directed officers to allow rectification under section 154 where the audit report or other evidence could not be filed with the return of income but was filed later. Therefore, the application under section 154 was to be allowed. (AY.2017-18, 2018-19).

Satish Cold Storage v. Dy. CIT (2022) 97 ITR 601 (SMC) (Lucknow) (Trib)

S.154: Rectification of mistake -Mistake apparent from the record -Limitation — Order was passed within the period of limitation – Order is valid .

The Tribunal held that according to section 154, no order can be made after the expiry of four years from the end of the financial year in which orders sought to be amended were passed. The Assessing Officer sought to amend the order dated March 25, 2013. Hence, the limitation would start from April 1, 2014, and would expire on March 31, 2017. However, the rectification order was passed on March 16, 2016. Therefore, the grounds of the assessee were devoid of merit. (AY .2007-08)

Adm Agro Industries Latur and Vizag Pvt. Ltd. v. Dy. CIT (2022) 96 ITR 450 (Delhi)(Trib)

S. 154: Rectification of mistake -Mistake apparent from the record - Charitable Purpose — Taxability of corpus donations - Issue pending in High Court —Debatable issue - Rectification is not permissible. [S. 11(1(d), 12AA]

It was held that the rectification petition filed by the assessee under section 154 of the Act was on a debatable issue and therefore, it could not be considered at this stage. That apart, the assessee had submitted that the issue was pending before the High Court. Thus, there was no infirmity in the order passed by the Commissioner (Appeals).(AY. 2009-10)

Periyasamy Pillai Educational Trust v .ITO (E) (2022) 96 ITR 70 (SN.)(Chennai) (Trib)

S. 154 : Rectification of mistake -— Property transferred in name of assessee by same seller in 2009 — Sale by assessee in 2010 — Allowing exemption -Sale by assessee gave rise to short-term or long-term capital gains- Rectification order is not valid .[S.54F]

The assessee entered into a banakhat with the seller in 1987 in respect of a piece of land, which was duly registered. The land was converted from agricultural to non-agricultural use with the object to effectuate the banakhat. The gram panchayat tax bills for the period 1988-89 to 2004-05 with the assessee's name showed that the assessee had effective right over the property since 1987. This suggested that the assessee had secured the right to purchase the property after completing necessary formalities. The same property in respect of which banakhat was entered into in 1987 was transferred in the name of the assessee by the same seller. Hence, it would be difficult to conclude that it was a straightforward case wherein the Assessing Officer had made a "mistake apparent from the record". Both parties, the seller and

the buyer of the land (assessee), took necessary steps to effectuate the sale. The sale was registered in the assessee's name on December 8, 2009. The issue required an analysis of facts before coming to the conclusion whether the sale of land by the assessee gave rise to short-term or long-term capital gains. This was not an issue which could be a subject matter of section 154 of the Act. The Commissioner (Appeals) had erred in upholding the order under section 154 of the Act passed by the Assessing Officer.(AY.2011-12)

Vinodkumar S. Totla v. ITO (2022)95 ITR 58 (SN)(Ahd)(Trib)

S. 154 : Rectification of mistake -Mistake apparent from the record -
Disallowance of an amount under section 40A(3) cannot be brought within realm of a mistake which could be held as glaring, patent, apparent and obvious from record, thereby rendering assessment order passed by Assessing Officer amenable for rectification under section 154 of the Act . [S. 40A((3), R.6DD]
The Tribunal relying upon the decision of Hon'ble Supreme Court in T.S. Balaram, ITO v. Volkart Brothers [1971] 82 ITR 50,held that the AO had grossly erred in invoking the provisions of section 154 of the Act for the purpose of making disallowance u/s. 40A(3) of the Act, therefore, the order therein passed by him cannot be sustained and is accordingly liable to be vacated. (AY. 2013-14)
Poonam Mittal (Smt.) v. ITO (2022) 215 TTJ 29 (UO)/ 138 taxmann.com 380 (Amritsar) (Trib)

S. 154 : Rectification of mistake-Mistake apparent from the record-Industrial undertakings-Failure to file audit report-Audit report in Form 10CCB was up loaded on receipt of intimation u/s 143(1)-The Assessing Officer is directed to grant the relief [S. 80IA, 143(1), Form-10BBC]
Assessee-company filed its return of income and claimed exemption under section 80-IB. Assessing Officer denied the exemption on ground that assessee had failed to file audit report in Form-10CCB along with its returns and subsequently issued intimation under section 143(1). On receipt of the intimation the assessee filed an application under section 154 after uploading copy of auditor report in Form-10BBC. CPC rejected the application. On appeal the Tribunal relied on the Circular No. 689 of 19994, dated 24-8-1994, directed the AO to allow the claim by passing the rectification order allowing the claim under section 80IB of the Act. (AY. 2017-18, 2018-19)
Satish Cold Storage v. DCIT(2022) 97 ITR 601 / 197 ITD 41 (Lucknow) (Trib.)

S. 154: Rectification of mistake-Mistake apparent from the record-Property held for charitable purposes-Failure to file Form No 10 along with return of income-Form was filed before the Assessing authority before completion of assessment-Eligible for exemption-Rejection of rectification application was not valid. [S.11(2)(c), 143(1), 154, R. 17, Form No.10]

Assessee public charitable trust filed its return as NIL claiming exemption under section 11. Return was processed under section 143(1) by intimation order denying claim of exemption for reason that assessee forgot to file Form no. 10 along with claim for exemption along with return of income. On receipt of the intimation the assessee uploaded the Form No 10 along with rectification application. The AO rejected the application. On appeal the Tribunal held that as per insertion of new sub-clause (c) of section 11(2) assessee was required to furnish Form no. 10 along with return of income from assessment year 2016-17 onwards and there

was no delay prescribed for filing Form no. 10 for relevant assessment year 2015-16. There was only an intimation under section 143(1) made about rejection of claim of assessee and there was no regular assessment made for relevant year and assessee filed Form No. 10 before Assessing Authority before completion of regular assessment thus, assessee was eligible for grant of exemption. (AY. 2015-16)
Shree Harsaniji Public Charitable Trust. v. ITO (2022) 197 ITD 16 (Ahd) (Trib.)

S. 154 : Rectification of mistake-Mistake apparent from the record-Refunds-Interest-No adjudication by Chief Commissioner / Commissioner-Additional ground-Denial of interest by passing rectification order is held to be not valid [S. 244A (2))]
Held that since there was no adjudication by Chief Commissioner/Commissioner on period for which interest was to be excluded on refund payable to assessee, AO could not invoke section 154 to rectify assessment and disallow interest under section 244A on ground that interest payable on refund was attributable to delay caused by assessee. (AY. 2007-08)

Grasim Industries Ltd. v. DCIT (2022) 197 ITD 542 / 99 ITR 69 (SN)/ 220 TTJ 273/ 219 DTR 169 (Mum) (Trib.)

S. 154 : Rectification of mistake-Mistake apparent from the record-Income from house property-Discrepancy in receipts as shown in 26AS-Service tax-Reconciled by assessee with sufficient evidence adduced before revenue and this resulted in higher amount being shown in Form 26AS, additions made for difference was to be deleted [S. 22, 143(1)]

Assessee filed income tax return. Assessing Officer issued notice under section 143(1) on ground that rental income as shown in Form 26AS were higher than receipts reported in income tax return. Pursuant to said notice assessee filed rectification application explaining that rental income was computed excluding service tax whereas in Form 26AS it was inclusive of service tax. However, Assessing Officer made additions for said difference. Held that since assessee had deducted TDS on rent inclusive of service tax instead of exclusive service tax which had been duly reconciled by assessee with sufficient evidence adduced before revenue and this resulted in higher amount being shown in Form 26AS, additions made for difference was to be deleted.(AY. 2017-18)
Taraben Jayantilal Patel. (Smt.) v. DCIT (2022) 197 ITD 755 (Ahd) (Trib.)

S. 154 : Rectification of mistake-Mistake apparent from the record-Interest-Revised return enhancing its TDS claim-Interest on refund-withdrawal of interest under section 244A(2) was beyond scope of rectification-Order of rectification was quashed and set aside.[S. 244A(2)]

Assessee was granted interest payment under section 244A of the Act. Subsequently, Assessing Officer withdrew said interest on ground that assessee enhanced TDS claim by filing revised return and thus, assessee was responsible for delay in making correct claim of refund. As per section 244A(2) final call about period to be excluded for grant of interest is to be taken by Pr. Chief Commissioner or Chief Commissioner or Pr. Commissioner or Commissioner and that exercise was admittedly not done in instant case. Since Assessing Officer had no authority to decide period for which interest under section 244A was to be

declined, withdrawal of interest under section 244A(2) was beyond scope of rectification of mistake under section 154 of the Act. (AY. 2010-11)

Otis Elevator Company (India) Ltd. v. DCIT (2022) 196 ITD 558 (Mum) (Trib.)

S. 154 : Rectification of mistake-Mistake apparent from the record-Audit objection-Payment made for purchasing trading goods-Violation of section 40A(3)-Rectification order is valid-Merit matter remanded [S. 40A(3), R. 6DD]

Tribunal held that overlooking the mandatory provision of law in the original assessment was an apparent mistake of law rectifiable under section 154 of the Act. On merit, the matter was to be restored to the file of the Assessing Officer for decision afresh after giving reasonable opportunity to the assessee to consider whether the case fell under rule 6DD. (AY. 2013-14)

Shiv Shakti Traders. v. ACIT (2022) 195 ITD 292 (Delhi) (Trib.)

S. 154: Rectification of mistake-The date of the original order is the commencing point of limitation, irrelevant to the subsequent rectification or subsequent application. Hence, the order passed beyond 31.03.2015 is barred by limitation. [S. 143(1), 154(7)]

CPC processed the return of income, and intimation u/s.143(1) of the Act was issued on 05.03.2012. The AO passed a rectification order on 20.06.2016. The period for passing the rectification order was four years from the end of the financial year in which the order sought to be amended. Under section 154(7), the time to pass the order had expired on 31.03.2016. The date of the original order is the commencing point of limitation, irrelevant to the subsequent rectification or subsequent application. Hence, the order passed beyond 31.03.2015 is barred by limitation. (AY. 2003-04)

P. S. Jagdish v. Dy.CIT (2022) 216 TTJ 500/ 211 DTR 153 (Chennai) (Trib.)
Shekar P. S. v. Dy. CIT (2022) 216 TTJ 500 / 211 DTR 153 (Chennai)(Trib)

S. 154 : Rectification of mistake-Inadvertent mistake by assessee-The AO has to rectify the said mistake [S. 143(1)]

The Tribunal held that though there is remedy to revise the return of income but if the assessee could not revise the return the assessee can move an application u/s 154 of the Act. If the mistake is obvious or inadvertent on the part of the assessee in reporting incorrect income in the return of income, the AO has to pass the rectification order. The matter was remanded to the AO to find out correct facts and pass the order accordingly.(ITA No. 12 & 13 /VNS / 2022 dt. 4-8-2022)(AY. 2013-14, 2014-15)

Poorvanchal Vikas Foundation v.ITO (2022) The Chamber's Journal-September-P. 134(Varanasi)(Trib)

S. 154 : Rectification of mistake-Deduction of tax at source-Aircraft lease-Order of High Court-Tribunal for earlier year holding payment exempt and High Court dismissing Department's appeal-Order of CIT(A) allowing the rectification order is held to be justified.[10(15A), 40(a)(i), 250]

The Assessing Officer made a disallowance under section 40(a)(i) of the Income-tax Act, 1961 in respect of supplementary rent towards use of aircraft body, usage of life limited parts of auxiliary power unit and parts of engine, for failure to deduct tax at source, taking the view that as the payments were not covered by the approval of Central Board of Direct Taxes under section 10(15A) of the Act, the assessee was bound to deduct tax at source thereon. The Commissioner (Appeals) affirmed the disallowance, but in orders under section 154, reversed it, holding that the payment of supplementary lease rent under lease agreements entered into before March 31, 2007 was exempt under section 10(15A) of the Act and no disallowance under section 40(a)(i) of the Act was warranted, and that for AY. 2007-08 the Tribunal had deleted the addition under section 40(a)(i) and the High Court had dismissed the Department's appeal thereagainst. On appeal,held, that there was a mistake apparent from records which the Commissioner (Appeals) had rightly rectified under section 154 of the Act.(AY. 2013-14, 2014-15)

Add. CIT v. Interglobe Aviation Ltd. (2022)94 ITR 28 (SN)(Delhi)(Trib)

S. 154 : Rectification of mistake –Interest-Compensation on Agricultural land-Failure to claim statutory deduction-Mistake apparent hence amenable for rectification [S. 57(iv), 143(1)]

Assessee was entitled for a statutory deduction of fifty per cent of interest income, but he failed to raise such a claim in his return, he moved an application under section 154 before Assessing Officer. Assessing Officer rejected the claim. On appeal the Tribunal held that since assessee had in his return of income duly reflected interest on compensation qua compulsory acquisition of his agricultural land, failure on his part to raise a claim for deduction under section 57(iv), being clearly in nature of glaring, apparent, patent and obvious mistake from record, rendered order passed by Assessing Officer amenable for rectification under section 154 and, thus, Assessing Officer was directed to allow assessee's claim for deduction under section 57(iv) of the Act. (AY. 2012-13)

Dhanesh Kumar Jain. v. ACIT (2022) 193 ITD 1 / 220 TTJ 113/218 DTR 307 **(Delhi) (Trib.)**

S. 154 : Rectification of mistake-Unutilisation of MODVAT-Order of Assessing Officer and Commissioner (Appeals) got merged with order of Tribunal-Rejection of rectification application is justified [S.254(1)],

Dismissing the appeal of the asessee the Tribunal held that where order of Assessing Officer and Commissioner (Appeals) got merged with order of Tribunal, rectification of a mistake being apparent from record could only be effected in order of Tribunal and not in order of Assessing Officer or Commissioner (Appeals). (AY. 2004-05 & 2011-12)

Khyati Chemicals (P.) Ltd. v. DCIT (OSD) (2022) 193 ITD 446 (Ahd) (Trib.)

S. 158BC : Block assessment-Undisclosed Income-Excess stock found during search-unaccounted income admitted by director in the course of search proceedings-Tribunal deleting the addition-High court reversing the order of the Tribunal-Order of High Court affirmed [S. 158BB Art, 132]

On appeal by the Revenue the High Court reversed the finding of the Appellate Tribunal wherein the Tribunal has deleted the addition. On SLP against the order of High Court the Court held that it could not be said that the High Court had committed any error in allowing the appeal and quashing the order passed by the Tribunal.(BP. 1-4-1985 to 20-3-1996)

Kuwer Fibres (P.) Ltd. v CIT (2022)449 ITR 174 (SC)

S. 158BC : Block assessment-Agreement with third parties-Search-Received entire amount from distributors much before release of film-Addition of balance amount as undisclosed income was justified.[S. 158BD]

Assessee, entered into three agreements with third parties for conferring on them distribution rights of film 'Love Birds'. Search was conducted in business and residential premises of assessee and on basis of search report, proceedings under section 158BC read with section 158BD were initiated against assessee firm and they were called upon to file their return for block period in question. It was noticed that part of amounts derived from agreements were shown for regular assessment, and in respect of balance amounts not received as per agreements, it was not shown and offered for assessment-.Assessing Officer noticed that balance amount was not offered for tax and hence he was of view that it was an undisclosed income for block period. Assessee stated that it did not receive balance amount as it had been waived as movie failed at box office and hence, it should not be treated as a concealed income and it did not warrant initiation of proceedings under section 158BC read with section 158BD. Court held that agreements that had been entered into by assessee with distributors clearly indicated that same had nothing to do with flop of film at box office or otherwise. Moreover, Tribunal on examination of ledger accounts seized during search had come to a definite conclusion that assessee had already received entire amount from distributors much before release of film and therefore question of waiver would not arise. Order of Tribunal was affirmed. (BP 1-4-1987 to 17-3-1997)
Pyramid Films International v. Dy. CIT (Inv) (2022) 325 CTR 406 / 211 DTR 137 / 137 taxmann.com 413 (Mad)(HC)

S. 158BD: Block assessment-Undisclosed income of any other person-Agreements with the distributors conferring distribution rights of film-Entire amount received prior to release of the film-Entire amount is liable to be offered for tax. [S. 158BC]
In this case it has been held by the Hon'ble High Court that the contention of the assessee that it did not receive entire amount as part of it had been waived as movie failed at box office is contrary to the fact as the assessee had already received entire amount from distributors much before release of film. Hence, addition of balance amount as undisclosed income under section 158BC is justified. (BP 1-4-1987to 17-3-1997)

Pyramid Films International v.Dy.CIT(Inv.) (2022) 211 DTR 137 (Mad) (HC)

S. 158BD : Block assessment-Undisclosed income of any other person-Incriminating material is found-Amount received much before release of film-Addition of amount waived as undisclosed income-Held to be proper [S. 132, 158BC]

In the course of search several incriminating materials including books of account of the assessee-firm were found. On the basis of evidence the addition was made as undisclosed income.The Tribunal confirmed the addition. On appeal high Court affirmed the addition. (.BP 1-4-1987 to 17-3-1997)

Pyramid Films International v. Dy. CIT (2022)441 ITR 387 (Mad)(HC)

S. 158BD : Block assessment - Undisclosed income of any other person -Recording of satisfaction is mandatory – Assessment order was quashed [S. 158BC]

Allowing the appeal the Tribunal held that neither in the covering letter nor during the course of hearing, the Revenue has been able to produce the satisfaction note. Accordingly the order was quashed . Followed CIT v. Calcutta Knitwears (2014) 267 CTR 105 (101 DTR 217 (SC) . (BP 21 -5-1991 to 25 -9 -1995)

Sharda Dwellings (P) Ltd. v. ACIT (2022) 219 TTJ 57 (UO) (Indore) (Trib)

S. 158BFA : Block assessment – Penalty -Additional ground – Quantum proceedings time-barred – Levy of penalty is time-barred [S. 158BFA(2)]

Tribunal admitted the additional grounds of jurisdictional issue and held that the quantum order passed beyond the due date, being time barred and there cannot be any consequential proceedings . In the case of other family members, the jurisdictional High Court has concurred with the Tribunal's order dismissing the quantum appeal on the ground of limitation . Tribunal also held that once an assessment order which is the very base of all the consequential proceedings is barred by limitation, then it is to be treated as nullity and on that basis, no consequential order can be passed. Orders levying penalty u/s 158BFA(2) are quashed. [BP. 1-4 -1989 to 8 – 12 -1999]

Subhash Chandra Dey v. ACIT (2022) 219 DTR 185 / 220 TTJ 625 (Gau)(Trib)
Maya Rani Dey v ACIT. ACIT (2022) 219 DTR 185 / 220 TTJ 625 (Gau)(Trib)
Ashis Kumar Dey . ACIT (2022) 219 DTR 185 / 220 TTJ 625 (Gau)(Trib)

S. 158BFA : Block assessment-Penalty-No incriminating material found or seized-Estimate of income-Benami transaction-Failure to record satisfaction-Levy of penalty is not valid.[S. 158BC,158BF(2)]

Held that when the very basis of initiation of penalty had changed the initiation of penalty was no more sustainable in the eyes of law. Further, the Assessing Officer had not mentioned his satisfaction in the assessment order before issuing show-cause notice and referring the matter for initiation of penalty. Even otherwise, the penalty as sought to be imposed was on the basis of section 158BFA(2). According to that provision, the imposition of penalty was not automatic. The satisfaction for imposition of penalty was required to be recorded by the Assessing Officer in the assessment order. On facts not only undisclosed income had been reduced but the basis for calculating the undisclosed income had also been changed and hence the penalty was deleted.(AY.1997-98 to 2003-04)

Madho Das Bangard v. ACIT (2022)93 ITR 622 (Jaipur)(Trib)

S. 160 : Representative assessee - Gift – Non -Resident – Brother – General power of Attorney – Gift not registered – Disclosed in the hands of General power of attorney holder - Same income cannot be taxed again. [S. 161, Transfer of Property Act, 1882]

The Tribunal held that legally, according to the provisions of the Transfer of Property Act, 1882 any gift of an immovable property needs to be registered. However based on the merits of the case on a beneficial note since the general power of attorney holder had disclosed the income from the sale of plots gifted by his sister in his return of income and discharged his liability to tax on the returned income, in his return of income, the same income could not be taxed once again in the hands of the assessee. Admittedly, there was no revenue loss to the Department on account of the income being taxed in the hands of the general power of attorney holder. The Department also could not bring on record any details regarding the loss of revenue to the Department attributable to the transactions entered into by the assessee in the present case. (AY. 2014-15)

ITO (IT) v. Bikkina Savitri Devi (Smt.) (2022) 96 ITR 30 (SN) (Vishakha) (Trib)

S. 163 : Representative assessees –Non -Resident - Search and seizure - Email communications, hard disk and invoice details – Not belong to non-resident – Addition was deleted - DTAA -India – France [S. 132 , 153C, Art , 15]

Based on search proceedings in an Indian company, certain email communications, hard disk and invoice details and mentioning the name of the assessee and a non-resident and were found. Based on the said details, it was concluded that the said non-resident had performed certain interior decoration services for the group under search and tax has not been paid on income derived through such services by the non-resident.The assessee was assessed as a representative solely based on mail communications. Held that these material i.e.certain email communications, hard disk and invoice details did not belong to the non-resident and so the action u/s 153C of the Act was misplaced. Further, merely based on mail communications, treating assessee as a representative is invalid on jurisdictional requirements.On merits, it was held that the services by the non-resident fall under the category of Independent Personal services under Article 15 of India-France DTAA. The performance of professional services or other independent activities of a similar character shall be taxable only in France except when such a non-resident has a fixed place of business in India. This was clearly not the case in the present scenario, hence no income arises in India. Addition deleted and matter ruled in favour of assessee both on jurisdiction and merits of the case. (AY. 2009 -10 to 2011 -12 , 2014 -15)

Moin Akhtar Qureshi v. ACIT (2022) 218 TTJ 878 (Delhi)(Trib)

S. 170 : Succession to business otherwise than on death-Amalgamation-Assessment order was passed in the name of company which is ceased to be in existence as on date when Assessing Officer passed order-Order is nullity [S. 2(31)), 143(3)]

Scheme of amalgamation of assessee-company was approved by NCLT, Bangalore Bench on 5-9-2017 and DRP took cognizance of company that came into existence post amalgamation but on receipt of DRP's direction, Assessing Officer passed final assessment order in name of assessee-company. Held that since assessee-company ceased to be in existence as on date when Assessing Officer passed order of assessment was not sustainable in eyes of law, being a nullity. (AY. 2011-12)

Marlabs Innovations (P.) Ltd. v. DCIT (2022) 196 ITD 179/ 97 ITR 64 (SN) (Bang) (Trib.)

S. 172 : Shipping business - Non-residents - Provisional return — Summary assessment was set aside - The Assessing Officer was directed to pass the order u/s 172 (7) of the Act[S. 139(1), 172 (3) 172(4)) , 172(7)]

Held that where the assessee had exercised his right to be assessed under the normal provisions of the Act according to section 172(7) by filing his return of income for the entire year then he ought to be assessed on the return of income so filed according to the normal provisions of the Act, taking note of all benefits and exemptions available to the assessee and the summary assessment orders passed under section 172(4) on each voyage undertaken earning freight from India, ought to be set aside. For the year in question, the assessee had filed his return of income declaring income for the entire year according to the provisions of section 139(1). Therefore, the summary assessment order passed under section 172(4) was set aside the Assessing Officer was directed to pass the order u/s 172 (7) of the Act. (AY.2015-16)

Interocean Shipping (India) P. Ltd. v. Dy. CIT (IT) (2022)100 ITR 560 (Rajkot) (Trib)

S. 172 : Shipping business-Non-residents-Shipping business-Option to be assessed under normal provision-Summary assessment orders passed under section 172(4) on each voyage undertaken earning freight from India is held to be not valid-DTAA-India-Greece [S. 139, 172 (4), 172 (7), Art.8]

Held that where the Assessee has exercised his right to be assessed under normal provisions of Act as per section 172(7) by filing his return of income for entire year, then he ought to be assessed on return of income so filed as per normal provisions of Act, taking note of all benefits and exemptions available to assessee.Since assessee had exercised his right to be assessed under normal provisions of Act as per section 172(7) by filing his return of income as per section 139(1) summary assessment order passed by Assessing Officer was set aside (AY. 2015-16)

Interocean Shipping (India) (P.) Ltd. v. DCIT (IT) (2022) 196 ITD 253/ 100 ITR 560 (Rajkot) (Trib.)

S. 178 : Company in liquidation-Proceeding admitted for Corporate Insolvency Resolution Process (CIRP) under Insolvency and Bankruptcy Code, 2016 (IBC)-National Company Law Tribunal (NCLT)-Assessment order was set aside and matter was to be restored to file of Assessing Officer and matter shall be kept in abeyance till completion of CIRP.[Insolvency and Bankruptcy Code, 2016, S. 14, 238]

Moment an insolvency petition is admitted, moratorium that comes into effect under section 14(1)(a) expressly interdicts institution or continuation of pending suits or proceedings against corporate debtors. In response to show cause notice issued to assessee, it had pointed out that proceedings were liable to be stayed since it had been admitted for Corporate Insolvency Resolution Process (CIRP) under Insolvency and Bankruptcy Code, 2016 (IBC) and presently was under moratorium by orders of National Company Law Tribunal (NCLT), Assessing Officer committed grave error in proceeding to complete assessment without hearing assessee on issue relating to effect of IBC and refusing to stay proceedings till completion of CIRP. Assessment order was to be set aside and matter was to be restored to file of Assessing Officer and matter shall be kept in abeyance till completion of CIRP.

Editorial : Honourable single judge observed,Professional misconduct by Advocate and Rude behaviour in court and addressing the Chair in highly disrespectful manner. Cost of Rs. 10000 imposed upon advocate.The division bench held that adverse observations and comments against the learned Advocate for the Appellant/Assessee were expunged in its entirety and the imposition of costs was vacated.

Srei Equipment Finance Ltd. v. Addl. CIT (2022) 214 DTR 345 / 327 CTR 1 / 141 taxmann.com 307 (Cal)(HC)

Editorial : Order of single judge, reversed,Srei Equipment Finance Ltd. v. Addl. CIT (2022) 214 DTR 359 / 327 CTR 16(Cal)(HC)

S. 179 : Private company-Liability of directors-Managing Director of Ltd Company-Violation of principle of natural justice-lifting the corporate veil-Satisfaction was not recorded-Order was quashed.[S. 220(2), Art, 226]

The petitioner is manging director of Crest Paper Mills Limited ("CPML") Order was passed under section 179 holding Assessee liable to pay a demand along with interest under section 220(2) which was otherwise due and payable by company, CPML. On writ allowing the petition the Court held that notice under section 179 issued by Revenue did not at all inform Assessee of its intention to treat company, i.e., CPML as a public company by invoking principle of 'lifting corporate veil' much less did it refer to any material or conclusion based upon which it could assume jurisdiction under section 179 against directors of a Private Company. Procedure adopted by Revenue was clearly violative of principles of natural justice and without affording to Assessee, an opportunity of being heard on question, as to why principle of 'lifting corporate veil' be not applied in case of CMPL to justify recovery of tax dues from directors. Court also held that orders are also unsustainable on another ground that power under section 179 can be exercised against Directors upon satisfaction of certain conditions only if tax dues cannot be recovered from private company to justify that tax dues cannot be recovered, Assessing Officer has to enumerate steps taken towards recovery of tax dues from company. On facts there was no satisfaction recorded that tax cannot be recovered. Petition was allowed.(AY. 2010-11)
Rajendra R. Singh v. ACIT (2022) 328 CTR 691/ 216 DTR 386/ 289 Taxman 682 / 143 taxmann.com 34 (Bom)(HC)

S. 179 : Private company-Liability of directors-Assessment order against company set aside-Order not valid. [Art, 226]
Allowing the petition the Court held, that after the setting aside of the order of assessment to the extent challenged before the Tribunal, there was no tax due from the company. Consequently there could not be any recovery of tax from any director of the company for any AY. The order under section 179 was not valid.(SJ)

Mailakkattu Varghese Uthup v. PCIT (2022) 444 ITR 326 (Ker) (HC)

S. 190 : Collection and recovery - Deduction at source - Advance payment -Assessing Officer was not allowing credit despite Directions by Dispute Resolution Panel — Assessing Officer was directed to Consider claim of assessee afresh in accordance with law.

The Tribunal held that the AO ought to have placed reliance on various judicial precedents wherein it is held that credit for TDS has to be provided to the Appellant irrespective of the year to which the income relates. The Tribunal further held that the AO has erred in not following his assessment orders for previous years and thereby erred in not granting credit for TDS of Rs.13,735,965, which was denied in AY 2010-11. The AO ought not to have disallowed the TDS credit in respect of the entire advances considering that some portions of the advances were forming part of unbilled revenue and hence offered to tax. The Tribunal held that with regard to credit for tax deducted at source not given by the Assessing Officer despite directions by the Dispute Resolution Panel, the Assessing Officer was to consider the claim of the assessee afresh in accordance with the law. (AY. 2010-11, 2011-12)

U.L. India Pvt. Ltd. v. Dy. CIT (2022)96 ITR 191 (Bang) (Trib)

S. 192 : Deduction at source-Salary-Failure to deduct ta at source-Plea of bona fide belief based on circular issued by employer for its own use-No clarification by Income-Tax Authorities-Levy of interest is valid [S.10(5)), 133A, 201(1), 201(1A), R. 2B]

The assessee, the State Bank of India provided benefit of leave travel concession to its employees and while deducting tax at source from the salary of the employees, leave travel concession was considered exempted under section 10(5) of the Act read with rule 2B of the Income-tax Rules, 1962. A survey under section 133A of the Act was conducted in the business premises of the assessee's head office and it was noticed that the assessee has given exemption under section 10(5) of the Act towards reimbursement of leave travel concession or leave fare concession for travel outside India and travel by long circuitous routes to the destination. The same practice was followed by all the branches of the bank. Proceedings under section 201(1) and (1A) of the Act were initiated by issuing show-cause notices. The Assessing Officer rejected the explanation offered by the assessee and considered the assessee an "assessee in default" under section 201 of the Act for making short deduction under section 192 of the Act and liable to pay the defaulted amount. This order was confirmed by the Commissioner (Appeals) and the Tribunal. On appeals to the High Court Dismissing the appeals, the Court held that the service conditions and circulars issued by the Indian Banks' Association is not a statutory circular and would not govern the Income-tax Department. The employees had directly travelled abroad and in the return journey, had visited places in India. The itinerary confirmed this. The charges towards the tour received by the tour operator demonstrated that it was the consolidated charges for the entire journey. In such circumstances, they could not be split up to avail of the benefit of leave travel concession or leave fare concession by the employees. That the plea of bona fide belief by the assessee placing reliance on the circular issued by the Indian Banks' Association was untenable since no clarification from the Department was sought by the assessee on this aspect. The bona fide belief pleaded by the assessee was without any legal basis. Considering these aspects, the authorities had rightly held that the assessee was an "assessee in default" under section 201(1).(AY.2011-12, 2012-13, 2013-14)

State Bank of India v. ACIT (TDS) (2022)442 ITR 363 (Karn)(HC)

S. 192 : Deduction at source-Salary-Fees for professional or technical services-In house consultants-Assessee in default-Incentive policy adopted by company-Orders of Tribunal was set aside.[S. 194J, 201(1), 201(IA)]

Held that the assessee-company ran and maintained a hospital. Held, that the assessee employed doctors under three categories : salaried doctors, in-house consultants, and visiting consultants. In the light of the assessment said to have been done in the hands of the in-house consultant doctors treating their income as professional income received from the assessee, the matter required reconsideration by the Assessing Officer, more particularly in view of the incentive policy adopted by the company. The orders of the Tribunal and the authorities in so far as they treated the assessee as in default with respect to the in-house consultant doctors were liable to be set aside and the matter restored to the Assessing Officer to reconsider the matter in the light of the incentive policy and the return of income filed by the in-house consultant doctors.(AY.2011-12, 2012-13, 2013-14)

Hosmat Hospital Pvt. Ltd. v. ACIT (TDS) (2022) 440 ITR 149 (Karn) (HC)

Editorial : Order of Tribunal in Hosmat Hospital Pvt. Ltd. v. ACIT (TDS)(2016) 50 ITR 70 (SN) (Bang)(Trib) set aside.

S. 194A : Deduction at source-Interest other than interest on securities-Interest payable under an award of Motor Accident Claims Tribunal-Petitioner is not aggrieved-Petition not entertained as public interest [S. 194A(3)(ixa)]

Petitioner had sought to challenge validity of section 194A(3)(ixa) under which tax is required to be deducted at source on interest payable under an award of Motor Accident Claims Tribunal. Court held that since petitioner was not personally aggrieved by award of MACT and a challenge of this nature would have to be brought before Court by a person aggrieved, there was no reason to entertain said petition filed in public interest.

Amit Sahni v. UOI (2022) 285 Taxman 83/ 212 DTR 83/ 325 CTR 703 (SC)

S. 194A : Deduction at source-Interest other than interest on securities-Interest on compensation-Motor Accidents Claims Tribunal awrd-TDS cannot be deducted by insurance companies on interest on compensation with effect from 1-6-2015 even if interest is beyond Rs. 50,000 in a particular year[S.2(24), 2(28A), 56(2), Form 15G, Rule,29C, Motor Vehicle Act, 1988]

As per the MACT award the claimant met with an accident and was awarded an amount along with interest from the date of the Claim petition till the passing of the award. An award was passed by the MACT, where by the Insurance company was directed to deposit the deducted amount of TDS along with interest to the claimants. On revision petition**,**dismissingthe petition the Court held that TDS cannot be deducted by insurance companies on interest on compensation with effect from 1-6-2015 even if interest is beyond Rs. 50,000 in a particular year. Where interest on compensation is paid prior to 1-6-2015, then Insurance Company will pay amount of tax deducted at source to claimants and

Insurance Company may seek refund from Income-tax Authorities by filing a revised income tax return. However, where interest on compensation is actually paid after 1-6-2015, which is exceeding Rs. 50,000 per claimant per financial year, Insurance Company will pay on securing 'Form 15-G' of Rule 29-C of Income-tax Act/Rules from claimants.Matter remanded.

New India Assurance Company Ltd. v.Ravinder Kumar @ Vickey. (2022) 289 Taxman 497 (P& H)(HC)

S. 194A : Deduction at source-Interest other than interest on securities-Interest awarded by Motor Accidents' Tribunal under Motor Vehicles Act-Not income-Not liable to deduct tax at source-Any provision for deduction of tax at source in the section would not govern the taxability of the receipt. [S. 2(24), 56(2)(vii), 145A, 145B, 194A(3), Motor Vehicles Act, 1988, S. 171, Art, 226]

Allowing the petition the Court held that the interest awarded by the Motor Accident Claim Tribunal under section 171 of the Motor Vehicles Act, 1988, is not taxable under the Income-tax Act, 1961. The interest awarded in motor accident claim cases from the date of the claim petition till the passing of the award, or in the case of an appeal, till the judgment of the High Court in such appeal, would not be exigible to tax, not being an income. This position would not change on account of clause (b) of section 145A of the Act as it stood at the relevant time amended by Finance Act, 2009, which provision now finds place in sub-section (1) of section 145B of the Act. Neither clause (b) of section 145A, as it stood at the relevant time, nor clause (viii) of sub-section (2) of section 56 of the Act make the interest chargeable to tax, whether or not such interest is income of the recipient. Section 194A of the Act is only a provision for deduction of tax at source. Any provision for deduction of tax at source in the section would not govern the taxability of the receipt. The question of deduction of tax at source would arise only if the payment is in the nature of income of the payee. Insurance companies or the owners of motor vehicles depositing the requisite amount in due compliance with the awards of the Motor Accident Claims Tribunals shall deposit the full amount with the Tribunal and shall not deduct tax under section 194A of the Act on the interest awarded by the Motor Accident Claims Tribunal.

Oriental Insurance Co. Ltd. v. CCIT (TDS) (2022)445 ITR 300/ 217 DTR 178/ 328 CTR 315 / 287 Taxman 522 (Guj)(HC)

S. 194A : Deduction at source-Interest other than interest on securities-Compensation awarded by Motor Accident Claims Tribunal(MACT)-Compensation exceeded Rs.50 thousand-Tax deducted and deposited-MACT could not have directed Insurance Company to pay said amount yet again for its payment to claimants. [S.194A(ix), Art, 226]

Held that where interest component on compensation awarded by Motor Accident Claims Tribunal (MACT) exceeded Rs. 50 thousand and, Insurance Company deducted TDS and deposited same with Central Government, it had carried out mandate of clause (ix) of section 194A and had not committed any illegality, thus, MACT could not have directed Insurance Company to pay said amount yet again for its payment to claimants.

Bajaj Allianz General Insurance Co. Ltd. v. M.A.C.T. Kathua (2022) 286 Taxman 98 (J & K and Ladakh)(HC)

S. 194A : Deduction at source-Interest other than interest on securities-Entitlement of interest amount to awarded amount was only Rs. 7000 per claimant.i.e. below threshold limit of Rs. 50,000-Directed to release the amount without deduction of tax at source.[S. 194(3)(ixa)]

Application was filed on behalf of applicants/claimants seeking release of 20 per cent TDS deducted by non-applicant/Insurance Company on account of interest earned on awarded amount. Allowing the application it was found that proportionate valuation of entitlement of interest amount to awarded amount was only Rs. 7000 per claimant, i.e. below threshold limit of Rs. 50,000 which could be taxable by application of section 194A(3)(ixa) of the Act. Registry was directed to release amount deposited by Insurance Company, on account of deduction of tax on interest amount in favour of applicants.

Oriental Insurance Company Ltd. v. Abdul Rehman Lone (2022) 28 4 Taxman 125 (J&K & Ladakh)(HC)

S. 194C : Deduction at source-Contractors-Clearing and forwarding agent-Reimbursement of expenditure-Tax had to be deducted at source even in respect of reimbursements which had been incurred by agent.[S. 260A]

Dismissing the appeal, the Court held that the assessee failed to produce any document to establish their stand, despite opportunity being given at appellate stage, Tribunal rightly held that tax had to be deducted at source even in respect of reimbursements which had been incurred by agent. (AY. 2005-06)

Surendra Commercial & Exim (P) Ltd v. ITO(2022) 288 Taxman 580 / 220 DTR 35/ 329 CTR 955 (Cal)(HC)

S. 194C : Deduction at source – Contractors – Contractor providing Computer hardware and software- Tax deducted under 194C- Assessing Officer held tax to be deducted under 194J- Contractor not making available any technical services to assessee- Assessee not in default. [S. 194J, 201(1), (201(1A)]

Held, that the contract was for supply of computer hardware, software, connected accessories, uninterrupted power supply systems, furniture, stationery, consumables and this contract was to be carried out by the contractor through its own personnel. Thus, it was a simple contract of carrying out a work. Thus, section 194J was not applicable and the assessee had rightly deducted tax at source under section 194C. (AY. 2013-14, 2014-15)

District Project Officer v . ITO (TDS) (2022)98 ITR 356 (Jaipur) (Trib)

S. 194C : Deduction at source – Contractors - Common maintenance charges – The Assessing Officer is directed to recompute common area maintenance charges as per

section 194C - Provision for rent under section 194I of the Act – Limitation – Ground was dismissed . [S. 194C, 194I, 201(1)(201(ia)] —

Held, that the determination of the rent and common area maintenance were separate and the common area maintenance arrangements were not essential and an integral part for use of the premises. While there were no expenses incurred against the rent except for general building maintenance and municipal charges, the common area maintenance involved employment of separate staff and separate operations involved on day-to-day basis. Therefore, the rent was governed by section 194-I and common area maintenance charges by section 194C of the Act. The Assessing Officer was directed to recompute the common area maintenance charges, taking into consideration the two sections. Limitation ground was dismissed. (AY. 2012-13)

Yum Restaurants India (P.) Ltd. v. ACIT (2022)100 ITR 239 (Delhi) (Trib)

S. 194C : Deduction at source-Contractors-Harvesting contractors-Liable to deduct tax at source-Liable to pay interest. [S. 201(IA)]

Held that payments made to harvesting contractors for services fall within the realm of contract payment triggering liability to deduct Tax at Source under section 194C. Failure to deduct tax at source liable to pay interest. (AY. 2011-12 to 2016-17)

EID Parry India Ltd. v. ITO (TDS) (2022) 195 ITD 604 (Panaji) (Trib.)

S. 194H : Deduction at source-Commission or brokerage-Airline-Supplementary Commission-No distinction between direct and indirect payments-Principal-Agent relationship to be seen from terms of contract between parties-Liable to deduct tax at source-If recipient includes amount in its income and pays taxes-Assessee cannot be held in default-Interest leviable for period between date of default in deduction and date on which recipient paid tax--Different views High Courts-Reasonable cause-Levy of penalty was quashed [201(1), 201(1A), 271C, 273B; **Contract Act, 1872, ss. 182, 215, 216]**

There was a different view of High Courts on the issue of deduction of tax at source on airline paying the supplementary commission to agent on the selling of tickets. On appeal the court held that the assessees were required to deduct tax at source under section 194H of the Act on the supplementary commission accrued to travel agents entrusted by the assessees to sell airline tickets an agent acting of its own account does not, in principle, alter the nature of a contract of agency and only gives rise to the consequences mentioned under sections 215 and 216 of the Contract Act if the conditions contained within them exist. In any case, given that information regarding the supplementary commission was available to the airlines, the airlines could not have absolved themselves of liabilities under the Act attached to the accrual of that additional portion of income to the agent. These amounts were incidental to the transaction by which the flight tickets were sold on behalf of the air carriers and was for their benefit. Liable to deduct tax at source.If recipient includes amount in its income and pays taxes the assessee cannot be held in default. Interest leviable for period between date of default in deduction and date on which the recipient paid tax.Different views High Courts is a reasonable cause hence the Levy of penalty was quashed.(AY.2001-02)

Singapore Airlines Ltd v. CIT (2022)449 ITR 203/ 329 CTR 553/ 220 DTR 1 (SC)
KLM Royal Dutch Airlines v. CIT (2022)449 ITR 203/ 329 CTR 553 / 220 DTR 1 (SC)
British Airways PLC v CIT(TDS) (2022)449 ITR 203 / 329 CTR 553/ 220 DTR 1 (SC)

Editorial : Decision of the Delhi High Court in CIT v. Singapore Airlines Ltd(2009) 319 ITR 29 (Delhi)(HC)) affirmed. CIT v. Qatar Airways (2011) 332 ITR 253 (Bom)(HC) overruled.

S. 194H : Deduction at source – Commission or brokerage -Dealer incentive- principal to principal relation- Not liable to deduct tax at source .

It was held that where a dealer of vehicles is given certain incentives and the vehicles are sold by the assessee to the dealers on principal to principal basis, no TDS under S. 194H of the Act will be applicable. (AY. 2013 -14)

Mahindra Two Wheelers Ltd. v. Dy. CIT (2022) 219 TTJ 136 / 218 DTR 210 / 140 taxmann.com 367 (Mum) (Trib)

S. 194IC : Deduction at source-Payment under specified agreement Compensation received on Acquisition of Land for Public Project under an agreement-Award-Assessee not specific person under Section 46-Compensation received not liable to Deduction of tax at source-Deductor to file correction statement of Tax Deducted-Department to process statement-Tax Deducted at source to be refunded [S. 139, 194LA, 199, 200(3), 200A(d), 237,Rule 37BA(3)(i), Right to Fair Compensation and Transparency in land Acquisition, Rehabilitation and Resettlement Act, 2013 S. 46, 96, Art, 226]

NHRCL acquired the land of the assessee purportedly under an agreement and deducted tax at source from the compensation paid. Thereafter, a supplementary deed was entered into between the assessee and the NHRCL under which some additional amount was paid to the assessee and tax was deducted from that part of the compensation also. The assessee requested NHRCL to reverse the tax deducted on the ground that no tax was deductible. NHRCL replied that exemption from tax was not applicable to the compensation on the land acquired from the assessee and that the tax deducted from the payment made to the assessee was duly deposited with the Department. According to the assessee her income was exempted from tax and she could not fill Schedule TDS-2 and hence could not make an application under section 199 of the 1961 Act read with rule 37BA(3)(i) of the Income-tax Rules, 1962 whereas according to NHRCL the assessee had to file a return and claim refund. On a writ allowing the petition the Court held that the income received by the assessee on account of the property acquired by NHRCL by private negotiations and sale deed was exempted from tax. According to the public notice issued for acquisition of land through direct purchase and private negotiations by the office of the Sub-Divisional Officer for implementing the project, while purchasing the land directly for the project the compensation would be fixed by giving 25 per cent. enhanced amount of the total compensation being calculated for the land concerned in terms of the provisions of sections 26 to 33 and Schedule I to the 2013 Act. Undisputedly, the land was acquired for a public project. A policy decision had been taken by the State Government under its Government Resolution dated May 12, 2015 for acquiring the property by private negotiations and purchases for implementation of public project. The methodology was also provided. The computation of compensation had to be under the provisions of the 2013 Act which was introduced to expedite the acquisition for the implementation of the project. If the parties would not agree with the negotiations and direct purchase, then compulsory acquisition under the provisions of the 2013 Act had to be resorted to. The 2013 Act also recognised the acquisition through an agreement. NHRCL was

not a specified person within the meaning of section 46 of the 2013 Act and the provisions of the section would not be attracted. Therefore, since the exemption under section 96 of the 2013 Act would apply and no tax can be levied on the amount of compensation NHRCL should not have deducted tax from the amount of compensation paid to the assessee.Balakrishnan v. UOI (2017)391 ITR 178 (SC) and VIswanathan M. v. CCIT WP (C) No. 3227 of 2020, dated 18-2-2020 relied on. Court also held that it was not possible for the court to arrive at a conclusion as to whether the assessee was required to file return or not. NHRCL had already deducted tax which it ought not to have been deducted. Therefore, (i) NHRCL should file a correction statement as provided under the proviso to sub-section (3) of section 200 of the 1961 Act to the effect that the tax deducted by it was not liable to be deducted, (ii) the Department shall process the statement including the correction statement that might be filed under section 200A more particularly clause (d) thereof and (iii) the parties should thereafter take steps for refund of the amount in accordance with the provisions of the 1961 Act and the 1962 Rules. Circular No. 36 of 2016, dated October 25, 2016 (2016) 388 ITR (St.) 48)

Seema Jagdish Patil v. National Hi-Speed Rail Corporation Ltd. (2022)445 ITR 382 / 288 Taxman 26 / 215 DTR 153 /327 CTR 281 (Bom)(HC)

S. 194J : Deduction at source-Fees for professional or technical services-Supply of rolling stock-Payment to consortium not liable to deduct tax at source.[S. 201(IA)]

Dismissing the appeal of the Revenue the Court held that where contract entered into by assessee with a consortium of companies in connection with contract for designing, manufacturing, supply, testing, commissioning of passenger rolling stock and training was an indivisible contract and dominant object of contract was supply of rolling stock and work taken up was ancillary to supply of rolling stock and did not amount to professional or technical service, payment made by assessee to consortium is not liable to deduct tax at source. (AY. 2011-12)

CIT v. Bangalore Metro Rail Corporation Ltd.(2022)449 ITR 431/ 288 Taxman 539 (Karn)(HC)

S. 194J : Deduction at source-Fees for professional or technical services-Not liable to deduct TDS on telecom service provider, on payment of interconnect user charges as it could not be categorized as fee for technical services.[S. 9(1)(vii), 201]

Dismissing the appeal of the Revenue the Court held that the assessee is not liable to deduct TDS on telecom service provider, on payment of interconnect user charges as it could not be categorized as fee for technical service**. Followed** CIT, TDS v. Vodafone South Ltd. (2016) 241 Taxman 497 (Karn)(HC)

CIT (TDS) v. Tata Teleservices Ltd.(2022) 288 Taxman 775 / 217 DTR 453 (Delhi(HC)

S. 194J : Deduction at source-Fees for professional or technical services-Payment made for acquiring land for implementation of Bangalore Metro Rail Project-Assessee in default-Failure to deduct tax at source-Matter remanded to the Tribunal to determine whether payments made KIDB included service charges [S. 201(1), 201(IA)]

The assessee is a Special Purpose Vehicle entrusted with the task of implementation of Bangalore Metro Rail Project a joint venture of Government of India and Government of Karnataka. The assessee approached the Karnataka Industrial Area Development Board (KIADB) for acquisition of land in a smooth manner and entered in to agreement with KIADB. The payment made was claimed to be made towards acquisition of the land. The Assessing Officer initiated proceedings u/s 201(1), for failure to deduct tax at source and passed order u/s 201(1) and levying interest u/s 201(IA) of the Act. The order of the Assessing Officer was affirmed by the CIT(A) and Tribunal. On appeal the Court held that Liability to deduct tax would arise only if payment was made towards service charges by assessee which attracts tax liability. This factual aspects required re-examination by Tribunal being last fact finding authority and finding was necessary whether payment included service charges or not. Matter restored to file of Tribunal for ascertaining, whether payments made by the assessee company to KIADB included any component of service charges. Matter remanded.(AY. 2005-06 to 2012-13)

Bangalore Metro Rail Corpn.Ltd v. Dy CIT (2022) 284 Taxman 326/ 209 DTR 237/ 324 CTR 378 (Karn) (HC)

S. 194J : Deduction at source-Fees for professional or technical services-Transaction charges-TDS is deductible under section 194I and not under section 194J [S. 194I]

Tribunal held that transaction charges paid by members of BSE to BSE are in nature of payments de for facilities provided by Stock Exchange and no TDS on such payments would be deductible under section 194J provision of section 194I is applicable. (AY. 2008-09)

Shivnarayan Nemani Shares & Stock Brokers (p) Ltd v. DCIT (2022) 192 ITD 50 (Mum) Trib)

S. 194LD : Interest on certain bonds and Government securities-Interest earned from said NCDs-Bonds-Debentures-In absence of specific definition of bonds in Act, term 'bonds' used in section 194LD should be considered as including NCDs and accordingly concessional rate of 5 per cent-DTAA-India-Germany [S. 9(1) (v) 115A,Art, 11]

Assessee, a Germany based company, invested in rupee denominated non-convertible debentures (NCDs) of Indian companies. The assessee earned interest income from said NCDs which was offered to tax at rate of 5 per cent in accordance with section 194LD. Assessing Officer held that section 194LD was applicable only in case of interest from rupee denominated bonds ('RDBs') of Indian company or a Government security whereas assessee earned interest from NCD and therefore, a concessional rate of 5 per cent as mentioned in section 194LD was not available. Held that in absence of specific definition of bonds in Act, term 'bonds' used in section 194LD should be considered as including NCDs and accordingly concessional rate of 5 per cent was to be allowed. (AY. 2017-18)

Heidelberg Cement AG. v ACIT, IT (2022) 197 ITD 791 (Delhi) (Trib.)

S.194N:Payment of certain amounts in cash-Tax deduction at source-Cash withdrawal-Primary agricultural co-operative societies (PACCSs)-Challenge to circular was dismissed-If primary agricultural co-operative societies qualify for exemption, they should seek redressal from competent authority as provided in section 194N.[Art, 226]

Petitioners, primary agricultural co-operative societies (PACCSs), were working as an intermediary between bank and agriculturists in advancing crop and fertilizing loans for agriculturists. They filed writ petition challenging circulars issued by District Central Co-operative Banks that refer to mandate of section 194N for deduction of tax on cash withdrawal and contended that TDS should not be deducted on withdrawals made by them since beneficiary of such cash was agriculturists. Dismissing the petition the Court held that provision of section 194N is non-negotiable except in line with specific exceptions stipulated under proviso 4 and thus petitioners should seek redressal under such in-built statutory mechanism. It was open for banks to establish before Assessing Officer after examination of evidences that sums withdrawn by member societies did not represent income in their hands, however, said examination could only be carried out at instance of societies and not at instance of banks, who are payers, with statutory responsibility to deduct. (SJ)
S. N. 299 Molasi Primary Agricultural Co-operative Credit Society Ltd. v. ITO (2022) 220 DTR 217 / 145 taxmann.com 222/ (2023) 451 ITR 127/ 330 CTR 100 (Mad)(HC)

S.195 :Deduction at source-Non-resident-Collection agent in respect of monies receivable from Indian customers by its Associated enterprise a UAE registered entity-Failure to deduct tax at source-Oder was quashed without making any observations on the merits of the case-Assessing Officer was directed to pass fresh order after giving a reasonable opportunity to the assessee-DTAA-India-UAE [S. 133(6),201(1),201(1A), Art. 5(4), Art, 226]

The Petitioner is wholly owned subsidiary of Endurance International Group (India) Pvt. Ltd. which in turn is a subsidiary of Endurance Singapore Holdings 2 Pvt Ltd. Petitioner carries on business as a collection agent in respect of monies receivable from Indian customers by its Associated Enterprise. PDR Solutions FZC, UAE registered entity. The Assessing Officer passed an under Section 201(1) and 201(1A) read with Section 195 of the Act holding petitioner liable to pay a sum under Section 201(1) of the Act and some sum under Section 201(1A) of the Act and raised a total demand of Rs.8,45,12,593/-. The notice of demand under section 156 was also made on account of default in not deducting the tax as shown under Section 195 of the Act on the sums credited. On writ the court quashed the order and any consequential demand notice issued therein and asked the Assessing Officer to pass fresh orders after hearing the petitioner. If the Assessing Officer feels need to add any further points in the show cause notice the Assessing Officer shall issue fresh show cause notice to petitioner and petitioner may respond to the said show cause notice. (WP. No 1439 of 2021 dt 25-10-20021 (AY. 2016-2017)

Directi Services Pvt Ltd. v. ACIT(Bom)(HC)(UR)

S. 195 :Deduction at source-Non-resident-Other sums-Double taxation avoidance-Reimbursement of employees of American company-Provisions of the Double Taxation Avoidance Agreement are more beneficial than the provisions of the Act, it is the Agreement that should be treated as the law that requires to be followed and applied-Certificate for deduction at lower rate or nil deduction-The application under section 195 is at the instance of the person making the payment, while the application under section 197 is at the instance of the recipient-DTAA-India-USA [S. 40(a))(ia)), 90(2), 195(2), 197, Art, 12]

The assessee made an application under section 195(2) of the Act requesting for permission to remit the cost-to-cost reimbursements to be made without deduction of tax at source. The application was rejected. On a writ petition challenging the order of rejection, the Court held that that the recourse to section 195(2) was perfectly in consonance with the object of section 195. It was maintainable. The article 12(1) of Double Taxation Avoidance Agreement between India and the United States of America provides for taxation of royalties and fees for included services arising in a contracting State and paid to a resident of the other contracting State. Further, article 12(2) provides that royalties and fees for included services may also be taxed in the contracting State in which they arise. "Fees for included services" is defined in article 12(4). Section 195(2) of the Act, placed an obligation on the assessee to make deduction of tax under sub-section (1) where payment of any sum chargeable under this Act was being made to a non-resident. The words "chargeable under this Act" if read in conjunction with provisions of article 12(4) of the Double Taxation Avoidance Agreement and the obligation under section 195(2), it becomes clear that the definition of "fees for included services" under article 12(4) was more beneficial to the assessee in so far as its obligation to deduct the tax was concerned. Accordingly, article 12(4) was to be applied to determine the liability to deduct tax. In terms of article 12(4)(b) for the purpose of construing fees for included services, it is necessary that the rendering of technical or consultancy services must make available technical knowledge, experience, skill, know-how or processes. Further, it may also consist of development and transfer of a technical plan or technical design. It is not a mere rendering of technical or consultancy services, but the requirement of make available in terms of article 12(4)(b) that has to be fulfilled. The master services agreement, if subjected to scrutiny as regards the aspect of secondment did not reveal the satisfaction of the requirement of "make available" which is a sine qua non for being fees for included services. The fact that the employees seconded has the requisite experience, skill or training capable of completing the services contemplated in secondment by itself was insufficient to treat it as fees for included services de hors the satisfaction of the "make available" clause. The "make available" requirement that is mandated under article 12(4) granted benefit to the assessee and accordingly, the question of falling back on the provisions of section 9 of the Act did not arise. On this score alone, the conclusion in the order of the payment for the service falling within the description under section 9 of the Act as "deemed income", had to be rejected. The only order that could now be passed was of one granting "nil tax deduction at source".The court clarified that the finding as regards deduction of tax at source under section 195 of the Act is tentative and the question of liability of the recipient was to be decided subsequently. Accordingly, there was no question of prejudice to the Revenue at the stage of the section 195 order. The Court held that the application under section 195 is at the instance of the person making the payment, while the application under section 197 is at the instance of the recipient.Relied on Engineering Analysis Centre of Excellence Pvt.Ltd. v. CIT (2021) 432 ITR 471 (SC) (AY.2020-21) (SJ)

Flipkart Internet Pvt. Ltd. v. Dy. CIT(IT) (2022)448 ITR 268 / 215 DTR 289/ 327 CTR 289/288 Taxman 699(Karn) (HC)

S. 195 :Deduction at source-Non-resident-Share purchase agreement guarantor-No obligation to deduct tax at source. [S. 201, Art, 226]

The Assessing Officer initiated proceedings under section 201 of the Act to treat the assessee as an assessee-in-default for failure to deduct tax on the payment for purchase of shares of THL. On a writ petition the Court held that the share purchase agreement showed that the assessee was the guarantor of the payment to be made by IMAHI and not the purchaser. The purchaser himself could not be the guarantor also and that itself indicated that the assessee was not the purchaser of the shares of THL. The Assessing Officer had also not produced any evidence or referred to any document to even indicate that the assessee had paid any amount or could be even regarded as the person responsible for paying any sum to a non-resident (or a foreign company) chargeable under the provisions of the Act. As section 195 is applicable only to a person who is responsible for paying to deduct tax at the time of credit to the account of the payee or at the time of payment and the assessee did not make any payment to THL, there was no obligation on the assessee to deduct tax at source. The notice under section 201 was not valid.

Ingram Micro Inc v. ITO (IT) (2022) 444 ITR 568/ 212 DTR 360/ 326 CTR 650 (Bom)(HC)

S. 195: Deduction at source-Non-resident-Lower deduction of tax-Indexation-Binding precedent-Order of Tribunal is binding on lower Authorities-Capital gains-Cost of acquisition of the property in the hands of seller is deemed to be the cost for which the said property was acquired by previous owner-Excess tax paid by the petitioner was directed to be refunded with interest [S. 2(29A) 2(42A) 45, 48, 49(1)(ii), 55(2)(b)(ii), 195 (2), 244A(1)(b), Art 226]

Petitioner filed an application under Section 195(2) of the Act requesting him to issue a low tax rate Certificate for Deduction of Tax at Source in respect of consideration for purchase of immovable property from seller. According to the petitioner the cost of acquisition under Section 49(1)(ii) of the Act in the hands of the seller is deemed to be the cost for which the said property was acquired by Late Mrs. Dolly Jehangir Gazdar. It is also petitioner's case that under clauses (29A) and (42A) of Section 2, the period of holding of late Mrs. Dolly Jehangir Gazdar, Mrs. Rhoda Rustom Framjee and Mr. Rustom Framjee is also to be

included in the period of holding of the seller for ascertaining whether the said property is held by him as a short-term capital asset or as a long-term capital asset. Therefore, in its application under Section 195(2) of the Act, petitioner annexed a copy of draft computation of long-term capital gains of the seller in respect of the transfer of the said property. While computing the capital gains the petitioner took the benefit of the option provided in the provisions of Section 55(2)(b)(ii) of the Act, which provides that where a capital asset became the property of the assessee by any of the modes specified in Section 49(1) of the Act and the capital asset became the property of the previous owner before the 1st day of April 1981, cost of acquisition means the cost of the capital asset to the previous owner or the fair market value of the asset on the 1st day of April 1981 at the option of the assessee. Based on the scheme of the Act as is provided in Section 49(1)(ii), clauses (29A) and (42A) of Section 2 and Section 55(2)(b)(ii) of the Act, petitioner claimed that indexation of the cost of acquisition under the second proviso to Section 48 should be available from the financial year 1981-82. The petitioner relied on the Judgement of Special Bench in the case of DCIT v. Manjula J. Shah (2009) 126 TTJ 145 (SB) (Mum) (Trib). The application for lower tax was rejected. The petitioner paid the tax under protest and filed the writ for rejection of application for lower rate of tax. Allowing the petition, the Court held that the mere fact that the order of the appellate authority is not acceptable to the department or is the subject matter of an appeal cannot be a ground for not following it unless its operation has been suspended by a competent court. This has been reiterated by this Court in its order Karanja Terminal & Logistic Private Limited v. CIT (WP No.1397 of 2020 dated January 31, 2022) (Bom) (HC). The Court directed the department to accept the computation of the capital gains after taking into consideration the index cost and cost of the previous owner. The court also directed the revenue to pay interest under Section 244A(1)(b) of the Act for the period from the date of payment of tax, i.e., 7th January, 2011 till date. (WP. No. 331 of 2011 February 3, 2022)

Rohan Developers Pvt. Ltd v. ITO (IT) (Bom) (HC) www.itatonline.org

S. 195 :Deduction at source-Non-resident-Other sums-Reimbursement of salaries-Intercompany master service agreement-Rejection of application is not justified.[Art, 226]

The assesee made reimbursement of salaries to deputed expatriate employees. The assessee made an application under section 195 of the Act to obtain a 'Nil' TDS certificate on such reimbursement of salaries. The application was rejected. On writ the Court held that the assessee issues the appointment letter, the employees report to the assessee and the assessee has the power to terminate the services. Thus for the purpose of limited finding under section 195 of the Act the assessee can be said to be the employer. Accordingly the Revenue is not justified in rejecting the application filed by the assessee for the grant of 'Nil' TDS certificate.(WP.No. 3619 of 2021 dt. 24-6 2022)

Flipkart Internet Pvt Ltd v.DCIT (2022)139 Taxman.com 595 / The Chamber's Journal-August-P. 146 (Karn)(HC)

S. 195 :Deduction at source-Non-resident-Foreign companies-Equalization levy-Direction to deduct tax at source 10 percent-When the assessee is subjected itself to Equalization Levy of 2 per cent on payments under consideration, as an interim

measure, assessee would be entitled to receive its payment from GCI subject to a deduction of 8 per cent-DTAA [S.115JA, 166, 195(2), Art, 226]

On the application made by the appellant for lower deduction of tax, the certificate was issued under section 195(2) of the Act, directing payer company, Google Cloud India Pvt Ltd (GCI) to deduct tax at source at rate of 10 percent at time of making payment to assessee as per provision of section 115A read with DTAA. The appellant contended that since it had already subjected to Equalisation Levy of 2 percent on payment,withholding certificate a double jeopardy.On writ the Court held that since the appellant had already subjected itself to Equalization Levy of 2 per cent on payments under consideration, withholding certificate creates a double jeopardy by asking GCI to withhold tax at rate of 10 per cent, thus, without prejudice to rights and contentions, appellant be permitted to receive remittances, after suffering a withholding of only 8 per cent. Court held that purely as an interim measure, assessee would be entitled to receive its payment from GCI subject to a deduction of 8 per cent and that deposit of 8 per cent shall not be treated as any non-compliance of impugned order under section 195(2). (AY. 2022-23)

Google Asia Pacific Pte. Ltd. v. CIT(2022) 286 Taxman 592/ 211 DTR 175/ 325 CTR 249 (Delhi)(HC)

S. 195 : Deduction at source - Non-resident -Salary - Double Expatriate employees Reimbursement not taxable in hands of overseas entity — No making available of any technical knowledge or skill to Indian entity — Not fees for technical services — Not Liable for deduction of taxes at source – Cannot be treated as assessee in default . DTAA -India -USA [S. 192 , 201(1), 201(IA), Art , 12]

Held that since the arrangement was in the nature of a cost-to-cost reimbursement without any element of income therein. From a conjoint reading of article 15 of the OECD Model Convention and article 12 of the Double Taxation Avoidance Agreement between India and the United States of America, there was no doubt that the assessee in India was the economic and de facto employer of the seconded employees, who were in India for more than 183 days in a 12-month period. All the seconded employees had a permanent account number and filed their returns in India in respect of the full amount of their salary. The definition of "fees for technical services" excluded "consideration which would be income of the recipient chargeable under the head salaries". If the seconded employee was regarded as an employee of the assessee in India, the reimbursement to the overseas entity by the assessee would be in the nature of not "fees for technical services" but "salary". Therefore, the reimbursements could not be chargeable to tax in the hands of the overseas entity and there would be no obligation to deduct tax at source under section 195. Further, the concept of "make available" was not satisfied. Thus, even if the rendering of service by the seconded personnel constituted a contract for service, in the absence of "making available" any technical knowledge or skill to the Indian entity, it shall not constitute fees for technical services. As a result, the amount reimbursed by the assessee to the overseas entity could not be subjected to tax in India as there was no element of income embedded in it. Consequently, as there was no violation of section 195, the assessee could not be held to be an assessee-in-default under section 201(1) for all the years under consideration. The Assessing Officer was directed to delete the interest levied under section 201(1A).(AY.2011-12 to 2018-19)

Goldman Sachs Services Pvt. Ltd. v. Dy. CIT (IT) (2022) 99 ITR 104 (Bang)(Trib)

S. 195 : Deduction at source – Non-resident – Consultant - Commission on student recruitment- terminology 'consultants' not conclusive- Marketing of educational courses-Agents having no permanent establishment- Medical education programs-

Payment outside India to persons for evaluation of PH. D. Thesis- Evaluation not a rendering of technical services- Faculty development- Not liable to deduct tax at source- DTAA-India – Singapore [S. 5(2), 9(1)(vii), 201,201(IA), Art, 7, 12(5)]

The Tribunal held that the remittances made by the assessee outside India to these agents consultants could not be deemed to accrue or arise in India and, therefore, were not chargeable to tax in India. The assessee was not under an obligation to deduct tax at source and the assessee could not be treated as an assessee-in-default. The Tribunal also held that the evaluators had not provided to the assessee any technical services but merely applied their skill for evaluating Ph. D. theses, The Commissioner (Appeals) was not justified in holding the assessee-in-default for not deducting tax at source from the remittance made to the Ph. D. theses evaluators. Income earned by the non-resident in the form of faculty development expenses could not be said to be chargeable to tax in India and the assessee was not liable to deduct tax at source under section 195 of the Act. The assessee was not in default under section 201 of the Act and consequently interest could not be charged under section 201(1A) of the Act . (AY. 2011-12 to 2017 -18)

Sharda Educational Trust v. ITO, (TDS)(IT)(2022)97 ITR 456 (Delhi) (Trib)

S. 195 :Deduction at source-Non-resident-Reinsurance premium amount transferred to NRRs-NRRs did not have PE in India-Not liable to deduct TDS-DTAA-India-Singapore [S. 9(1)(i), 201, Art, 7]

Assessee, a licensed broker with IRDAI, made payment of reinsurance premium from an Indian insurance company to non-resident reinsurers (NRRs).Assessing Officer held that assessee had failed to deduct tax at source on said reinsurance premium paid to NRRs and held assessee as assessee in default as per provisions of section 201 of the Act. Held that since the assessee was merely a broker and did not have any ownership on premium amount transferred to NRR, there was no liability to deduct TDS for remitting said amount to these NRRs in Singapore. Further NRRs did not have PE in India, premium received by NRRs could not be held as chargeable to tax in India. (AY. 2016-17)

ITO (IT) v. International Reinsurance and Insurance Consultancy & Broking Services (P.) Ltd. (2022) 197 ITD 198/(2023) 222 TTJ 515/ 224 DTR 29 (Mum) (Trib.)

S. 195 :Deduction at source-Non-resident-Sale of property-Capital gains-Resident payee had reported income in ITR or did not have positive income in assessment year under consideration would not absolve assessee's liability to deduct tax [S. 201, 201(IA)]

Assessee company engaged in business of real estate developed a residential complex at Bangalore and sold one apartment to a non-resident which was later on agreed to be sold back to assessee. Assessing Officer held that buyer was a non-resident hence the assessee was liable to deduct tax on capital gains arising from payment made to him and levied the interest. CIT (A) confirmed the addition. On appeal the Tribunal held that he was unaware of residential status of buyer could not be accepted as he was associated with assessee for a long time. As per section 195, it was not relevant whether non-resident payee had reported income in ITR or he did not have positive income in assessment year under consideration. Payment in question was chargeable to tax and assessee having made payment was bound to deduct tax at source on payment made to non-resident. On facts the assessee having failed to deduct tax under section 195, charging of interest under section 201(1A) was upheld. (AY. 2011-12)

Nitesh Estates Ltd. v. ADIT (IT) (2022) 196 ITD 404/ 220 TTJ 1003/ 220 DTR 277 (Bang) (Trib.)

S. 195 :Deduction at source-Non-resident-Purchase of property without deduction of tax at source-Proviso to section 201(1)-Non-resident disclosed consideration in his return-Not to be treated as assessee in default-Payees filed their return of income disclosing said amount to a tax on 30-7-2012, interest amount levied upon assessee under section 201(1A) should be calculated for the period from 7-10-2011 to 30-7-2012 till the date of filing of return by payees. [S. 201(1,201(IA)]

Assessee purchased an immovable property from a non-resident seller and paid consideration without deducting tax at source. The Assessing Officer held the assessee as the assessee in default and levied tax liability of a certain amount under section 201(1) and interest liability of a certain amount under section 201(1A) of the Act. Held that sellers had disclosed consideration received from the assessee in their respective returns, thus, assessee could not be held as assessee-in-default as per the retrospective effect of amended provisions of section 201(1), inserted in Finance (No. 2) Act, 2019. Proviso to section 201(1) wherein benefit as to non-deduction of tax by assessee in case deductees had disclosed payments received by them in their respective returns had also been extended to payments made to non-residents for removal of anomaly has retrospective effect, therefore, assessee could not be held as an assessee in default as per proviso to section 201(1) of the Act. On the facts the assessee sold the property on 17-9-2011 payees filed their return of income disclosing said amount to a tax on 30-7-2012, the interest amount levied upon the assessee under section 201(1A) should be calculated for the period from 7-10-2011 to 30-7-2012 till the date of filing of return by payees. Matter remanded. (AY. 2012-13)
Shree Balaji Concepts. v. JT. CIT (2022) 195 ITD 632 (Panaji) (Trib.)

S. 195 :Deduction at source-Non-resident-Right to use software-Not royalty-Not liable to deduct tax at source [S. 9(1)(vi), Copy Right Act, 1957, S. 14(b)]
Held that where assessee, Indian company, acquired right to use Microsoft License software programmes assessee under a non-exclusive license granted by foreign company and foreign company continued to retain ownership under section 14(b) of Copyright Act, over such software, payment for said license made by assessee could not be held to be royalty, and, thus, assessee could not be fastened with liability to deduct tax at source on said payment and could not be termed as assessee-in-default. (AY. 2014-15)
Temenos India (P.) Ltd. v. DCIT (IT) (2022) 194 ITD 456 (Chennai) (Trib.)

S. 195 :Deduction at source-Non-resident-Purchase of property-Payee filed the return of income and disclosed the consideration in their respective returns and paid the taxes-Proviso to section 201(1) inserted by the Finance(No. 2) Act, 2019 is retrospective as it removes statutory over sums paid to non-residents [S. 201 (1), 201(IA)]

The assessee purchased an immovable property from a non-resident seller and paid consideration for same without deducting tax at source. The Assessing Officer held assessee as assessee in default and levied tax liability of certain amount under section 201(1) and interest liability of certain amount under section 201(1A) of the Act. The Assessee contended

that sellers had disclosed consideration received from assessee in their respective returns, thus, assessee could not be held as assessee-in-default as per retrospective effect of amended provisions of section 201(1), inserted in Finance (No. 2) Act, 2019. Order of AO is affirmed by CIT(A). On appeal the Tribunal held that payee filed the return of income and disclosed the consideration in their respective returns and paid the taxes. Proviso to section 201(1) inserted by the Finance(No. 2) Act, 2019 is retrospective as it removes statutory over sums paid to non-residents. The Tribunal held that property was sold by the appellant on 17 th September 2011 and the return of income by two payee have been filed on 30 th July, 2012. Accordingly the interest u/s 201(IA) of the Act has to be calculated for the period 7 th October, 2011 to 30 th July 2012 being the date of filing of the return by the two payees.(AY. 2012-13)

Shree Balaji Concepts v. ITO (IT) (2022) 195 ITD 632 (Panaji)(Trib)

S. 195 :Deduction at source-Non-resident-Transponder service fee-Not in nature of royalty in hand of recipient-Not liable to deduct tax at source [S. 9(1)(vii), 195(2)]

Dismissing the appeal of the revenue the Tribunal held that transponder charges were not in nature of royalty in hands of recipient despite amendment to section 9(1)(vi) and, therefore, there was no liability on part of assessee to deduct TDS on payments. Followed PCIT v. NEO Sports Broadcast (2019) 107 taxmann.com 17 (Bom)(HC (AY. 2015-16, 2016-17, 2020-21)

ACIT (IT) v. Viacom18 Media (P.) Ltd. (2022) 193 ITD 716 (Mum) (Trib.)

S. 195 : Deduction at source-Non-resident-Income deemed to arise in India-Computer software through EULA/distribution agreement, is not payment of royalty for use of copyright in computer software and, thus, same does not give rise to any income taxable in India-Not liable to deduct tax at source-DTAA-India-USA [S. 9(1)(vi), Copy Right Act, 1957, S. 14(a), 14(b),52(1) (aa), Art, 12(4)(b)]

Held that the amount paid by assessee Indian end user/distributors to non-resident computer software manufacturers/suppliers, as consideration for resale/use of computer software through EULA/distribution agreement, is not payment of royalty for use of copyright in computer software and, thus, same does not give rise to any income taxable in India. Not liable to deduct tax at source. (AY. 2009-10)

Bain & Company India (P.) Ltd. v. ITO (TDS) (2022) 193 ITD 787 (Delhi) (Trib.)

S. 197 : Deduction at source-Certificate for lower rate-Certificate of nil deduction-Non-Resident-Payments received from ONGC for work done inside and outside India-Powers of Assessing Officer while considering application for certificate-Difference of opinion between members of division bench-Matter to be referred to appropriate Bench-DTAA-India-The United Arab Emirates [R. 28, 28AA, Art. 7]

The assessee, a company incorporated under the laws of the United Arab In view of the difference of opinion between their Lordships on the question whether the assessee was entitled to a certificate of nil deduction of tax under section 197 of the Income-tax Act, 1961 for the financial year 2019-20 corresponding to the AY 2020-21 in respect of payments received by the assessee from ONGC towards work done outside and within India, the Bench directed the Registry to place the matter before the Chief Justice for constitution of an appropriate Bench to hear the matter.*(*AY. 2020-21)

National Petroleum Construction Co. v. Dy. CIT (2022)446 ITR 382 / 216 DTR 241/ 327 CTR 617/ 289 Taxman 87 (SC)

Editorial : National Petroleum Construction Co. v. Dy. CIT (2020) 421 ITR 24 / 185 DTR 57/ 312 CTR 217 / 271 Taxman 150 (Delhi)(HC)

S. 197 : Deduction at source-Certificate for lower rate-Pendency of rectification application-Directed the Assessing Officer to expedite decision on rectification application and grant refund [S. 154, 234, Art, 226]

Allowing the petition the Court held that the very foundation for the rejection of application filed by the assessee under section 197 seeking a certificate for withholding tax at a low tax rate on the ground that there existed huge outstanding demand on their internal portal was self-contradictory. The Deputy Commissioner (TDS) had noted in his order the observation of the Assessing Officer that a number of rectification applications of the assessee were pending and once they were decided, the demand against the assessee was likely to be reduced to nil. Accordingly, the order was set aside and directed to decide the rectification applications filed by the assessee in accordance with law and any refunds under section 237 due and payable were to be refunded to the assessee.(AY.2008-09 to 2014-15, 2016-17 to 2018-19)

Jones Lng Lasalle Property Consultants (India) Pvt. Ltd. v. Dy. CIT (TDS) (2022)447 ITR 40 (Delhi)(HC)

S. 197 : Deduction at source-Certificate for lower rate-Agreement providing for rate of deduction at 10 Per Cent.-Protocol providing for deduction at lower rate-Lower rate to be adopted-DTAA-India-Netherlands [Art]

Allowing the petition the Court held that where the agreement providing for rate of deduction at 10 Per Cent and Protocol providing for deduction at lower rate the lower rate to be adopted. Accordingly a certificate under section 197 should be issued to the assessee indicating that the rate of tax on dividend as applicable to the assessee was 5 per cent. under the Double Taxation Avoidance Agreement between India and the Netherlands. The order and certificate issued were set aside.(AY.2022-23)

Deccan Holdings B V v. ITO (2022) 445 ITR 486 (Delhi)(HC)

S. 197 : Deduction at source-Certificate for lower rate-Dividends-Rate of deduction-Direction was issued for issuance of certificate permitting deduction at 5 Per Cent. DTAA-India-Switzerland. [Art, 226]

On a writ petition the court set aside the orders passed by the Assessing Officer Circle (International Taxation) and directed issuance of a certificate under section 197 of the Income-tax Act, 1961 to the assessee indicating therein, that the rate of tax, on dividend, as applicable against the assessee was 5 per cent. under the Double Taxation Avoidance Agreement between India and the Switzerland. Referred Concentrix Netherlands B.V. v. ITO (2021)) 434 ITR 516 (Delhi)(HC)

Nestle Sa v.AO (IT) (2022)445 ITR 463 (Delhi)(HC)

S. 197 : Deduction at source-Certificate for lower rate-Dividend-Rate of tax-Dividend received by a Switzerland based company from Indian company-Lower withholding tax rate of 5 per cent instead of 10 per cent in view of MFN clause-DTAA-India-Switzerland. [S. 9(1)(iv), Art. 10, Art, 226]

Assessee filed an application under section 197 before Assessing Officer seeking to issue a certificate authorising assessee to receive dividend income from an Indian company subject to lower withholding tax rate of 5 per cent as applicable under India-Switzerland DTAA read with protocol and Most Favoured Nation ('MFN') clause. Application was rejected and directed to deduct tax at rate of 10 percent. On writ the Court held that the dividend received by a Switzerland based company from Indian company will bear a lower withholding tax rate of 5 per cent instead of 10 per cent in view of MFN clause and DTAA between India and Switzerland and therefore, certificate prescribing rate of 10 per cent was to be set aside and a certificate under section 197 would be issued in favour of assessee indicating rate of tax on dividend as applicable upon assessee at 5 per cent.

Cotecna Inspection SA v. ITO (2022) 286 Taxman 342 (Delhi)(HC)

S. 197 : Deduction at source-Certificate for lower rate-Deduction of tax at source-Lease of Aircraft-Survey-Direction to withhold tax at 10 Per Cent-Matter remanded-DTAA-India-Ireland [S. 133A, R. 28AA, Art, 8, 12].

The assessee made applications under section 197 of the Income-tax Act, 1961 for "nil" rate of withholding tax in respect of the lease rentals on the ground that under articles 8 and 12 of the Double Taxation Avoidance Agreement between India and Ireland they were liable to pay tax only in Ireland. The AO directed to withhold tax at 10 Percent based on the survey of group concern. On writ the Court held that the the order was unsustainable and accordingly, quashed and set aside. The matter was remanded back to the Assessing Officer. In the interim period, the assessee was entitled to avail of the "nil" rate of withholding tax, as had been the position in the past several years consistently. Since the aircraft in question was leased to AIL for a period of 12 years, the interests of the Revenue was sufficiently protected in any eventuality of the assessee being found liable to payment of taxes, interest or penalty.

Celestial Aviation Trading 64 Ltd. v. ITO (IT) (2022)443 ITR 441 (Delhi) (HC)

S. 197 : Deduction at source-Certificate for lower rate-Shipping, inland waterways transport and air transport-Nil rate of with holding tax certificate-DTAA-India-Ireland [S. 9(1)(i), Art, 8]

Assessee made application under section 197 for 'Nil' rate of withholding tax certificate on premise that under article 8 of India-Ireland Double Taxation Avoidance Agreement, it was liable to pay tax only in Ireland.ITO held that in case of another group company, which was engaged in similar transaction, there was evasion of tax, and, consequently, he denied 'Nil' rate of tax deduction certificate to assessee. On writ the Court held that aspects which Assessing Officer was obliged to took into consideration, while considering an application under section 197 had not at all been adverted to. Matter was to be remanded back to Assessing Officer. (AY. 2019-20)

Celestial Aviation Trading 64 Ltd v. ITO (IT) (2022) 285 Taxman 43/ 209 DTR 377/ 324 CTR 567 (Delhi) (HC)

S. 197 : Deduction at source-Certificate for lower rate-Education service-American university-e-platform operator-Equalisation levy at rate of 2 per cent on receipts from its Indian customers –Directed to pass a denovo order-DTAA-India-USA [S. 9(1) 10(5) art, 12(5)(c)]

Petitioner-university, an e-platform operator and a tax resident of USA, filed application seeking issue of certificate under section 197 for nil deduction of tax for financial year 2021-22. Assessing Officer rejected thee application and directed petitioner to hold TDS at rate of 10 per cent on receipts from Indian customers on ground that receipts were in form of royalty/FTS and petitioner would not be eligible for benefit of article 12(5)(c) of DTAA. On writ the petitioner claimed that receipts could not be characterised as royalty or FTS as services rendered were neither technical nor consultancy in nature and further, it had already paid equalisation levy at rate of 2 per cent on said receipts and also the order did not take into account impact of amendment carried out in section 10(50) which came into effect from 1-4-2021, to exclude receipts of petitioner which were subject to withholding tax at source to extent such receipts were exigible to equalisation levy. Court held that since the order did not discuss about impact of amendment in section 10(50) and applicability of various articles of DTAA, same was to be set aside and Assessing Officer was to be directed to pass a de novo reasoned order after taking into account amendments made to provisions of section 10(50) of the Act. (AY. 2022-23)

Coursera Inc. v. ITO TDS (2022) 285 Taxman 6 /210 DTR 101/ 325 CTR 237 (Delhi)(HC)

S. 197 : Deduction at source-Certificate for lower rate-Dividend received by a Netherland company from Indian Company-Liable to deduct lower withholding tax rate of 5 per cent instead of 10 per cent-DTAA-India-Netherland [S. 9(1)(iv) art. 10 Art, 226]

Petitioner Netherland based company held 58.39 percent of shares of Indian company [DFCPL] which proposed to distribute dividend. The petitioner filed an application under section 197 of the Act before the Assessing Officer requesting him to issue a certificate to lower withholding tax rate of 5 percent as applicable under the DTAA. The application was rejected and certificate was issued under section 197 of the Act at the rate of 10 percent. on writ allowing the petition the court held that dividend received by a Netherland company from Indian Company is Liable to deduct lower withholding tax rate of 5 per cent instead of 10 per cent as per DTAA-India and Netherland. (FY. 2021-22)

Deccan Holdings BV v.ITO (2022) 284 Taxman 300 (Delhi)(HC)

S. 198 : Deduction at source-Tax deducted is income received-Credit for tax deducted-Refund-Duty of Assessing Officer to allow credit-Rejection of claim to refund treating letters as barred by limitation-Held to be not proper-Directed the Assessing Officer to allow credit and grant consequential refund. [S.154(7), 199, 26AS

Held that the Assessing Officer could not be absolved from performing his duties as mandated under the provisions of this Act. Further, the letter dated March 13, 2013 was well within the period of limitation as prescribed under section 154(7) of the Act and non-performance of duties by the Assessing Officer to take a decision on the letter could not be taken to be prejudicial to the assessee when the second letter was filed by the assessee on August 3, 2017 reminding the Assessing Officer of the claim. The refusal to grant due credit of tax deducted at source as well as refund amounted to undue enrichment of the Department by failure to perform its duties. The orders of the authorities below were set aside and the claim to credit of tax deducted at source from the salary of the assessee duly offered to tax was to be allowed and the Assessing Officer was to grant consequential refund to the assessee.(AY.2009-10)

Amit Mantri v. Dy. CIT (2022)93 ITR 62 (SN)/ 215 TTJ 533 / 209 DTR 182 (SMC) (Jaipur) (Trib)

S. 199 : Deduction at source-Credit for tax deducted-Rectification of application was directed to be allowed-Matter remanded to the Appellate Authority to decide afresh.[S. 154]

Assessing Officer passed an assessment order disallowing credit of TDS to assessee on ground that credit of TDS was related to previous assessment year. Assessee filed a rectification application contending that said disallowance was a mistake and in view of provision of section 199, assessee was to be allowed credit of TDS The Assessing Officer rejected said application. Order of the Assessing Officer was affirmed by the CIT(A) and Tribunal. On appeal the Court held that there was mistake apparent from record which

required interference under section 154, thus, matter was remanded back to Appellate Authority to make a fresh decision on matter.(AY. 2005-06)
Chetna Jain. (Smt.) v. CIT (2022) 289 Taxman 549/ 220 DTR 417 (Cal)(HC)

S. 199 : Deduction at source-Credit for tax deducted-Income offered-Payer has deducted tax at source in financial year 2018-19-Credit for tax deducted at source has to be given in the year in which the income was offered for taxation [S.4, 198, Rule 37BA]

Held that sub-rule (3)(i) of rule 37BA makes it clear that credit of TDS shall be allowed in the year in which relevant income is taxable. Therefore, where the assessee-company, as per the regularly followed method of accounting, had offered relevant income, out of which TDS was deducted, for taxation in the assessment year 2017-18, credit of TDS was to be allowed during the assessment year 2017-18 in accordance with the mandate of section 199 read with rule 37BA, even though payers had deducted TDS in financial year relevant to the assessment year 2018-19. Matter was remanded for verification. (AY. 2017-18)
Shivganga Drillers (P.) Ltd. v. CPC, Income-tax, Bangalore (2022) 195 ITD 555 (Indore) (Trib.)

S. 199 : Deduction at source-Credit for tax deducted-Credit of TDS should be availed in the year in which income is assessed [S. 199(3), Rule 37BA(3), Form No. 26AS.]

The AO denied the claim of credit of TDS on the ground that such credit is not reflected in Form 26AS for the AY. 2016-17. On appeal the Tribunal held that the assessee shall be entitled to credit of TDS corresponding to the income shown in the AY. 2016-17. The AO was directed to grant credit for TDS in accordance with law.(ITA No. 6580/Del/ 2019 dt. 7-6-2022)(AY. 2016-17)

Interglobe Enterprises Pvt Ltd v. ACIT (2022) The Chamber's Journal-August-P. 156 (Delhi)(Trib)

S. 201 : Deduction at source-Failure to deduct or pay-Assessee in default-If recipient includes amount in its income and pays taxes-Assessee cannot be held in default-Interest leviable for period between date of default in deduction and date on which recipient paid tax-Matter remanded for verification.[S. 201(1), 201(IA)]
Held that If recipient includes amount in its income and pays taxes, the assessee cannot be held in default. Interest leviable for period between date of default in deduction and date on which recipient paid tax, however when the travel agents paid their taxes on the supplementary commission were not furnished, accordingly the matter remanded to the Assessing Officer to flesh out these points in terms of the interest payments due for the period from the date of default to the date of payment of taxes by the agents. Relied on CIT v. Elly and Co.(India) Ltd (2009) 312 ITR 225 (SC), Hindustan Coca Cola Beverage Pvt Ltd v.CIT (2007) 293 ITR 226 (SC) (AY.2001-02)

Singapore Airlines Ltd v. CIT (2022)449 ITR 203/ 329 CTR 553/ 220 DTR 1 / (2023) 290 Taxman 139 (SC)

KLM Royal Dutch Airlines v. CIT (2022)449 ITR 203/ 329 CTR 553 / 220 DTR 1 (SC)

British Airways PLC v CIT(TDS) (2022)449 ITR 203 / 329 CTR 553/ 220 DTR 1 (SC)

S. 201 : Deduction at source-Failure to deduct or pay-Interest-Non-convertible debentures and fixed deposit-Value less than Rs. 5,000-Not liable to deduct tax at source-Not liable to pay interest [S. 201(1)), 201(IA) Art, 136]

Dismissing the SLP of the Revenue the Court held that the Tribunal and the High Court had concurrently found that on non-convertible debentures and fixed deposits of value less than Rs. 5,000, there shall not be any tax deductible at source hence levy of interest is not valid. The Court, kept open the issue whether the levy of the interest was time-barred considering section 201(1A) of the Act. (AY.2007-08, 2012-13, 2013-14)

CIT(TDS) v. Jai Prakash Associates Ltd. (2022)449 ITR 183 / 290 Taxman 124 / 330 CTR 627/ 222 DTR 199 (SC)

Editorial : Order of High Court is affirmed, CIT(TDS) v. Jai Prakash Associates Ltd (ITA No. 114 of 2015 dt. 22-8-2017)(All)((HC)

S. 201 : Deduction at source-Failure to deduct or pay-Leave travel concession-Estimate of income-Assessee in default Public sector Bank-Employees travelling not only to domestic destination but to foreign countries-Not taking shortest possible route-Employees not entitled to exemption-Leave travel concession reimbursed without deduction of tax at source-Assessee could not claim ignorance about travel plans of employees-Complete facts available-Not a bona fide mistake-Liable to pay interest.[S. 10(5), 192(1),201(1), ITR. 2B]

The assessee was a public sector bank. The employees of the assessee availed of leave travel concession and their claims were fully reimbursed by the assessee without deduction of tax at source under section 192(1) of the Income-tax Act, 1961. Pursuant to a spot verification, the Assessing Officer took the view that the employees of the assessee had travelled not just within India but that their journey involved a foreign leg as well, and it was also not by the shortest route, that this was in violation of section 10(5) of the Act read with rule 2B of the Income-tax Rules, 1962 and hence the payment made to its employees by the assessee could not be exempted under section 10(5), and the assessee ought to have deducted tax at source, while making payment of the leave travel concession. The assessee's contention that no payment was made for the foreign travel though a foreign leg was a part of the itinerary undertaken by these employees was rejected and the Assessing Officer held the assessee an "assessee-in-default" under section 201. This was affirmed by the Commissioner (Appeals), the Tribunal and the High Court. On appeal dismissing the appeal the Court held that there were two violations of the leave travel concession rules : the employee did not travel only to a domestic destination but to a foreign country as well, and the employees had admittedly not taken the shortest possible route between the two destinations. The provisions of law prescribed that the air fare between the two points, within India would be given and the leave travel concession given would be of the shortest route between these two places, which had to be within India. A conjoint reading of these provisions with the facts of this case did not sustain the argument of the assessee that the travel of its employees was within India and no payments were made for any foreign leg involved. The contentions of the assessee that there

was no specific bar under section 10(5) on foreign travel as long as the starting and destination points remained within India and that payments made to these employees was of the shortest route of their actual travel, were not tenable.Court also held that many of the employees of the assessees had undertaken travel to Port Blair via Malaysia, Singapore or Port Blair via Bangkok, Malaysia or Rameswaram via Mauritius or Madurai via Dubai, Thailand and Port Blair via Europe. The assessee could not claim ignorance about the travel plans of its employees as during settlement of their leave travel concession bills the complete facts were available before the assessee about the details of their employees' travels. Therefore, it could not be a case of bona fide mistake since all the relevant documents and material were before the assessee-employer at the relevant time and the assessee, therefore ought to have applied its mind and deducted tax at source as was its statutory duty under section 192(1) of the Act.(AY.2013-14)

State Bank of India v. CIT (2022)449 ITR 192 / 329 CTR 449 / 219 DTR 369/ 144 taxmann.com 131 / (2023) 290 Taman 129/ (SC)

Editorial : State Bank of India v CIT (ITA No. 5 of 2020 dt 13-1-2020(Delhi)(HC), affirmed.

S. 201 : Deduction at source-Failure to deduct or pay-Leave travel concession-Estimate of income-Assessee in default Public sector Bank-Employees travelling not only to domestic destination but to foreign countries-Not taking shortest possible route-Employees not entitled to exemption-Leave travel concession reimbursed without deduction of tax at source-Assessee could not claim ignorance about travel plans of employees-Complete facts available-Not a bona fide mistake-Liable to pay interest.[S. 10(5), 192(1),201(1), ITR. 2B]

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State Bank of India v. CIT (2022)449 ITR 192 / 329 CTR 449 / 144 taxmann.com 131/ (2023) 290 Taxman 129 (SC)

Editorial : State Bank of India v CIT (ITA No. 5 of 2020 dt 13-1-2020(Delhi)(HC), affirmed.

S. 201 : Deduction at source-Failure to deduct or pay-Failure to deduct tax at source-Honorarium to Gust Faculty Lecturers-Alternative remedy-Writ petition was dismissed [S. 192 194H, 246 Art, 226]

The writ petition was filed against the order of the Assessing Officer treating the assessee in default for failure to deduct tax at source in respect of source-Failure to deduct or pay-Failure to deduct tax at source, honorarium to Gust Faculty Lecturers. According to the petitioner the provision of section 194J is applicable and not the provision of section 192. Dismissing the petition the Court held that the issue being disputed facts, the alternative remedy of appeal is available. Writ petition was dismissed. (AY. 2017-18)

Government Chandra Vijay College v.ITO (2022) 219 DTR 177/ 329 CTR 545 (MP)(HC)

S. 201 : Deduction at source-Failure to deduct or pay-Earlier order was set aside by the Tribunal-Department appeal is pending for hearing-Order of Tribunal not stayed-Order holding that the assessee in default for latter year following the order of earlier year was quashed-Order of Tribunal is binding on the Assessing Officer-Order treating the assessee in default was quashed. [S. 260A, Art, 226]

An order was passed u/s 201 for the assessment year 2014-15 against the assessee following the order of the Dispute Resolution panel for the assessment year 2010-11. The assessee filed writ before the High Court and contended that earlier order was set aside and reversed by the Appellate Tribunal in Gemological Institute of America Inc v.Add.CIT (IT) (2021) 189 ITD 254/ 88 ITR 505 (Mum)(Trib). The Tribunal held that the amount paid to GIA was not taxable. Allowing the petition the court held that the order of the Tribunal is binding on the Assessing Officer unless stayed by a competent Court. Accordingly the order was quashed. Followed UOI v. Kamlakashi Finance Corporation Ltd (1992) Supp. (1) SCC 443 (AY. 2014-15)

GIA laboratory Pvt Ltd v. ITO (2023) 450 ITR 7(Bom)(HC)

Editorial: Order in Gemological Institute of America CA Inc v. Add.CIT (IT) (2021)88 ITR 505 (Mum)(Trib), affirmed.

S. 201: Deduction at source-Failure to deduct or pay-Assessee made ad-hoc provisions of expenses in respect of various services received to facilitate closing of the books without reference to any particular party-No deduction towards the expenditure was claimed under these provisions-Proceedings under section 201 / 201(1A) unjustified. [S. 40(a)(ia)]

The assessee created head wise provisions of expenses on *adhoc* basis in respect of various services received to facilitate closing of its books without reference to any particular party. Such excess amounts of provisions created got reversed subsequently. No tax deduction at source was made in respect of such provisions. The Income Tax Officer initiated proceedings under Section 201(1)/201(1A) of the Act considering the assessee to be 'an assessee in default' in respect of the amount of tax which was not deducted at source on such provisions. On appeal CIT(A) and Appellate Tribunal upheld the action of the Income Tax Officer. On further appeal by the assessee, Hon'ble Karnataka High Court held that non-identification of the payees in the provisions and the disallowance of deduction expenditure under Section 40(a)(ia) of the Act has not been rightly appreciated by the Tribunal. Further, if the deduction is not claimed for the expenditures made in the provision even in the return submitted and the same is offered to tax in the subsequent year after reversing the entries pursuant to the receipt of the bills/invoices by the payees, the matter has to be analysed having regard to, whether income has accrued to the payees to deduct tax at source. (AY. 2012-12, 2013-14)

Volvo India Pvt. Ltd. (Rep by its Managing Director Sri Kamal Bali) v. ITO (TDS) (2022) 210 DTR 299 / 327 CTR 299 (Karn)(HC)

S. 201 : Deduction at source-Failure to deduct or pay-Limitation-Order is barred by limitation-limitation of two years as prescribed in section 201(3), as it existed prior to its substitution by Finance Act, 2013 with effect from 1-10-2014, would apply.[S.200, 201(3), 201(IA)]

Assessing Officer for assessment year 2009-10 initiated proceedings under section 201 and issued a notice dated 8-2-2016 to assessee for delay to deduct tax at source. Assessee objected to proceedings on ground that limitation for passing an order under section 201(1) and section 201(1A) would be two years from end of relevant financial year. The Assessing Officer rejected contention and held that section 201(3) was substituted by Finance Act, 2013 with effect from 1-10-2014 and, therefore, limitation of seven years from end of relevant financial year was applicable. Commissioner (Appeals) held that limitation prescribed under section 201(3), as it existed prior to amendment vide Finance Act, 2013, would apply hence barred by limitation. Tribunal affirmed the order of CIT(A).On appeal the High Court affirmed the and held that order passed under section 201 dated 30-3-2016 was barred by limitation. (AY. 2009-10)

ACIT v. ACER India (P)(Ltd (2022) 448 ITR 417/ 286 Taxman 570/ 215 DTR 35 / 327 CTR 613 (Karn)(HC)

S. 201 : Deduction at source - Failure to deduct or pay- Limitation for passing order-limitation provided for passing order under s. 201(1) for asst. yr. 2011-12 had already

expired on 31st March, 2014 i.e., prior to s. 201(3) came to be amended by Finance (No. 2) Act of 2014 – Order passed on 30th March, 2018 was barred by limitation. [S.201(1), 201 (3), Form , 26Q4]

Held that theamendment made in S. 201(3) by Finance (No. 2) Act, 2014 is effective from 1st Oct., 2014; since Form No. 26Q for the last quarter was filed in the financial year ending on 31st March, 2012, the limitation provided for passing order under s. 201(1) for asst. yr. 2011-12 had already expired on 31st March, 2014 i.e., prior to s. 201(3) came to be amended by Finance (No. 2) Act of 2014 and, therefore, the order under S. 201(1) passed on 30th March, 2018 was barred by limitation. Followed Tata Teleservices v. UOI(2016) 284 CTR 337 / 132 DTR 1/ 385 ITR 497 (Guj) (HC) ,Oracle India (P) Ltd. v. Dy. CIT (2015) 126 DTR 146 / 376 ITR 411 (Delhi)(HC) (AY.2011-12)

Reebok India Co. v. JCIT (2022) 220 DTR 141 / 220 TTJ 871 (Delhi)(Trib)

S. 201 : Deduction at source - Failure to deduct or pay -Limitation -Order passed beyond two years from end of financial year in which last quarterly statement was filed — Barred by limitation – Additional ground – legal issue – Admitted – Delay in filing the appeal was condoned . [S. 201(1), 201(IA) , 201(3), 254(1)]

Held that the delay in filing of the appeal was condoned . Additional ground was admitted . On merit the Tribunal held that the last quarterly statement for the assessment year 2008-09 was filed by the assessee on May 22, 2009 and the time limit for passing assessment order under section 201(1A) was two years from the end of financial year in which statement under section 200 was filed, i. e., up to March 31, 2012. The Assessing Officer passed the assessment order on March 30, 2016 which was barred by limitation. Corrections made later by way of rectification were negligible.(AY.2009-10 to 2011-12)

Bank of India v. Dy. CIT (2022)100 ITR 39 (SN)(Surat) (Trib)

S. 201 : Deduction at source-Failure to deduct or pay-Limitation of two years-Reimbursement of leave travel concession schme to employees-Section 201(3), as amended by Finance Act (No. 2) of 2014 shall not be applicable retrospectively.[S. 10(5), 192, 201(1), (201(3)]

Assessee-employer had made payment towards reimbursement of amount under leave travel concession scheme to employees for their circuitous tour. Assessing held that benefit of exemption under section 10(5) would be available only in case of proceeding on leave to any place in India and not for international travel. Assessing Officer denied benefit of section 10(5) and held assessee as assesses-in-default within meaning of section 201(1)/(1A) for non-deduction of tax on such reimbursement made to its employees. Held that order under section 201(1)/(1A) was passed after limitation period of two years Section 201(3) as amended by Finance Act (No. 2) of 2014 providing that order under section 201(1) could be passed against assessee-in-default for failure to deduct TDS even after expiry of two years from end of financial year in which payment is made shall not be applicable retrospectively. Therefore order passed beyond limitation period of two years was without jurisdiction. (AY. 2011-12)

State Bank of India. v. ACIT (2020) 197 ITD 479 (Delhi) (Trib.)

S. 201 : Deduction at source-Failure to deduct or pay-Survey-Rural bank-Non submission of Form 15G and Form 15H-Collected more than 75 percent of Forms-

Order levying interest is set aside [S. 133A, 197A, 201, 201(IA), Form No 15G, 15H, Regional Rural Banks Act]

Assessee was a regional rural bank constituted under Regional Rural Banks Act and was assessable as a co-operative society. During course of survey proceedings, Assessing Officer found that assessee had not submitted Form 15G and Form 15H of investors of FD/term deposits along with complete relevant details of depositors such as name of depositor, amount of fixed deposit, date of said deposit made, date of maturity, interest rate etc.- Assessing Officer held assessee as assessee-in-default for payment of interest without deduction of tax at source under section 201 and raised demand under section 201(1) and interest under section 201(1A) of the Act. On appeal the Tribunal held that considering facts that assessee had collected above 75 per cent of Forms and percentage of Forms not submitted compared to total interest disbursal by assessee was just 2.26 per cent. Order levying the interest was set aside. (AY. 2011-12 to 2014-15)
Saptagiri Grameena Bank. v. ITO TDS (2022) 194 ITD 52 (Hyd) (Trib.)

S. 201 : Deduction at source-Failure to deduct or pay-Deducted at the time of payment-Deposited subsequent year-Assessee cannot be treated as assessee in default.[S. 201(1), 201(IA)]

Held that where TDS had been deducted by assessee at time of making payment in respect of provision made as on 31-3-2012 (year-end) and same had been deposited to Government account, assessee could not be treated to be an 'assessee in default' to extent TDS had been effectuated though in subsequent financial year. (AY. 2012-13, 2013-14)
Robert Bosch Engineering and Business Solutions (P.) Ltd v. ITO(2022) 194 ITD 340 (Bang) (Trib.)

S. 201: : Deduction at source-Failure to deduct or pay-Deducted at the time of payment Amounts not deductible-Deduction at source-Non-resident-Once an amount is disallowed for non-deduction of tax, it cannot be subject to TDS provisions again so as to make assessee liable to interest under section 201(1A) of the Act.[S. 40(ia), 40(a)(ia), 201(1), 201(IA))]

Held that once an amount is disallowed under section 40(a)(i)/(ia), 40(a)(ia) for non-deduction of tax, it cannot be subject to TDS provisions again so as to make assessee liable to interest under section 201(1A). [(AY. 2012-13, 2013-14)
Robert Bosch Engineering and Business Solutions (P.) Ltd v. ITO(2022) 194 ITD 340 (Bang) (Trib.)

S. 201: Deduction at source-Failure to deduct or pay-Pathological testing services-Commission or discount to sample collection centres-No obligation to deduct tax at source-Cannot be treated as assessee in default.[S. 194H]

Since the assessee is not making the payments but is the receipt, they will not be any obligation to withhold any taxes under the Act. Hence, the order passed under section 201 of the Act against the assessee will be quashed. (AY. 2009-10 to 2012-13)

ITO v. Thyrocare Technologies Ltd. (2022) 216 TTJ 513/ 213 DTR 233 (Mum) (Trib.)

S. 205 : Deduction at source-Bar against direct demand-Interest income-Credit for tax deducted at source-Payee has to discharge its responsibility of showing that the payer has deducted tax on income-Assessing Officer need not insist on demand in respect of said TDS payment to Government account-Matter remanded.[S. 199]

Assessee-payee had neither furnished any details of amount of TDS in respect of interest income, which it had shown if any in its profit and loss account, nor furnished any evidence to support deduction of tax at source by payer of income, issue of granting credit of tax deducted at source was to be restored to file of Assessing Officer for verification as to whether assessee had shown interest income corresponding to TDS in profit and loss account for year under consideration and whether tax had been deducted at source by payer of income. Assessing Officer need not insist on demand in respect of said TDS payment to Government account. Matter remanded] (AY. 2008-09 to 2010-11, 2014-15)

DZ Bank. v. DCIT (2022) 197 ITD 147/ 219 TTJ 351 (Mum) (Trib.)

S.206AA: Requirement to furnish Permanent Account Number-Non-Resident-Provision cannot have overriding effect on DTAA-Rates prescribed under DTAA are applicable-DTAA-India-Netherland [S.2(37A)(iii), 4, 5, 9(1)(i),90(2), 206AA(7), Art, 12(4)]

The assessee had taken an engine on lease with a foreign company having no permanent establishment in India. It had deducted tax at rate of 10 percent on lease rental as per provision of DTAA between India and Netherland. On appeal the Tribunal held that provision of section 206AA cannot have overriding effect on payment made to non-resident, rate prescribed under DTAA are applicable hence no demand was payable by assessee. On appeal High Court affirmed the order of the Tribunal. (AY. 2013-14)

CIT v. Air India Ltd. (2022) 289 Taxman 492 (Delhi)(HC)

S. 206C : Collection at source-Trading-Forest produce –Trading of timber sawn into logs of different dimensions and shapes which was imported from other countries-Timber sold by assessee would not amount to forest produce and, thus, provisions of section 206C(1) were not applicable on same.[S. 206(1)]

Assessee is engaged in trading of timber sawn into different dimensions and shapes. Assessing Officer held assessee to be assessee in default for non-collection of tax on sale of sawn timber as per section 206C(1) of the Act. On appeal CIT(A) set aside the order of the Asseessing Officer. On appeal the Tribunal held that liability under section 206C would not arise in case of trader in swan timber.On appeal by Revenue dismissing the appeal the Court held that since timber sold by assessee was not obtained from forest and same was imported from other countries for trading purpose, said timber would not amount to forest produce and, thus, provisions of section 206C(1) were not applicable (AY. 2005-06 to 2009-10)

PCIT v. Nirmal Kumar Kejriwal. (2022) 289 Taxman 51/ 216 DTR 441/ 328 CTR 222 (Cal)(HC)

S. 207 : Advance tax-Salary income-Tax deducted at source-Not liable to pay advance tax. [S. 143(1), 192, 207(2), 208, 234B, 234C]

Assessee is a senior citizen deriving income from salary, income from other sources and income from share from partnership firm. Assessee was served with intimation under section 143(1) passed by CPC, Bangalore for non-compliance of advance tax provisions along with demand for interest under sections 234B and 234C.-Commissioner (Appeals) observed that in absence of copy of terms of service, assessee had failed to prove employer-employee relationship and, thus, assessee was earning business and professional income and benefits of section 207(2) were not available to him and, accordingly, interest under sections 234B and 234C being consequential and mandatory had been correctly charged by CPC for non-compliance of advance tax provisions. On appeal the Tribunal held th since assessee was a senior citizen above 60 years of age and had been consistently filing return declaring salary income and tax had been deducted at source under section 192, assessee had satisfied conditions of section 207 and was not liable to pay advance tax. (AY. 2016-17)

Jayantilal D Ray. v. ACIT (2022) 194 ITD 713 (Ahd) (Trib.)

S. 215 :Interest payable by assessee-Advance tax short of assessed tax-Fresh assessment made by Assessing Officer giving effect to Commissioner's revision order constitute a regular assessment-Entitle to waiver of interest only to extent stated in order under Rule 40(1) [S. 139(8), 215(4),215(6), 263]

Dismissing the appeal the Court held that the Tribunal was right in holding that a fresh assessment made by the Assessing Officer to give effect to the directions of the Commissioner under section 263 setting aside the original assessment, constituted a regular assessment for purposes of section 215 of the Act.The Deputy Commissioner in exercise of power under rule 40 had held that delay in finalization of the assessment was not attributable to the assessee and therefore the assessee was not liable to pay interest under section 215 beyond the period of one year from the date of filing of return. His order had not been challenged by the Department or the assessee and as a result such order had attained finality. In the absence of challenge to the order under rule 40(1) the assessee was not entitled to waiver of interest for a period of one year and was entitled to the benefit of order passed under rule 40(1) only to the extent stated therein and was liable to pay the balance amount according to the order of the Deputy Commissioner. Order of Tribunal is affirmed. (AY.1985-86)

Bennett Coleman and Co. Ltd. v. Dy CIT (2022)441 ITR 25 (Bom)(HC)

S. 220 : Collection and recovery-Assessee deemed in default-Interest mandatory-Delay in payment of tax-Waiver-No genuine hardship-Raising dispute before Authority not ground for waiver of interest-Dispute pending resolved under mutual agreement procedure-Order of Commissioner refusing to waive interest is justified. [S. 220(2), 220(2A)]

Application for waiver of interest was rejected by the Commissioner. On writ the High court affirmed the order of the Commissioner on the ground that delay in payment of tax due to dispute pending before authority can not be the ground for waiver of interest. On a petition for special leave to appeal to the Supreme Court,dismissing the petition held that merely raising a dispute before any authority could not be a ground not to levy the interest or waiver of interest under section 220(2A) of the Act. Otherwise each and every assessee may raise a dispute and contend that as the assessee was bona fide litigating no interest shall be leviable. Under section 220(2) of the Act, the levy of simple interest on non-payment of the tax at one per cent. per annum is, as such, mandatory.*(*AY.1997-98 to 2006-07)

Pioneer Overseas Corporation USA (India Branch) v. CIT(IT) (2022)449 ITR 186 / 329 CTR 686 / 220 DTR 39 / 145 taxmann.com 475 /(2023) 290 Taxman 375 (SC)

Editorial: Decision affirmed, Pioneer Overseas Corporation USA (India Branch) v. CIT(IT) (2017) 248 Taxman 186 (Delhi)(HC)

S. 220 : Collection and recovery-Assessee deemed in default-
Stay of demand-Directed to deposit 20 percent of demand sum-Recovery prroceedings was stayed.[S. 220(6), Art, 226]

On writ the Court by passing an interim order stayed the recovery proceedings on depositing the 20 % of tax in dispute. The petitioners have deposited 20 % of tax in dispute.

Urban Improvement Trust. v. ACIT (2022) 142 taxmann.com 239 (Raj)(HC)

Editorial: SLP dismissed as withdrawn, Urban Improvement Trust. v. ACIT (2022) 289 Taxman 2 (SC)

S. 220 : Collection and recovery-Assessee deemed in default-Stay-Deposited 20 percent of demand-Pendency of stay application-Recovered entire amount in a ex parte manner-Assessing Officer was directed to refund excess amount already recovered from assessee and he would be entitled to keep only 20 per cent of demand until appeal was decided. [Art, 226]

Assessee filed its return of income which came in scrutiny and high pitched additions were made. Demand of Rs. 12.63 lakhs was created against assessee. Assessee preferred appeal against said order and suo moto deposited 20 per cent of demand created. As a matter of precaution, stay application was also filed by assessee, requesting for keeping demand in abeyance till disposal of appeal. Assessing Officer, without disposing stay application filed by assessee, without considering fact that assessee had himself deposited 20 per cent of demand, initiated coercive recovery and recovered entire amount of Rs. 12.63 lakhs from bank account of assessee in a ex parte manner.On writ the Court directed the Assessing Officer to refund excess amount already recovered from assessee and he would be entitled to keep only 20 per cent of demand until appeal of assessee pending before Commissioner (Appeals) was decided. (AY 2017-18)

Ram Gopal Sharma v. ITO (2022) 288 Taxman 211 (Raj)(HC)

S. 220 : Collection and recovery-Assessee deemed in default-Stay-Directed to deposit 10 percent of outstanding demand [S. 220(6), 246A, Art, 226]

Assessment order was passed making additions to income of assessee. Assessee preferred first appeal against assessment order under section 246A before Commissioner (Appeals) and also filed a separate application under section 220(6), before Assessing Authority for stay of entire disputed demand in said application. Assessing Authority directed assessee to pay 20 per cent of alleged outstanding as a condition precedent to consider application under section 220(6) of the Act. On writ the Court held that as per section 220 (2), assessee has to pay 1-1.5 per cent interest for every month for outstanding amount, therefore, appeal was to be disposed of after affording an opportunity to assessee and meanwhile, assessee was directed to deposit 10 per cent of outstanding demand.(SJ)

Yeswath Kavitha v. ITO (2022) 288 Taxman 120 (Mad)(HC)

S. 220 : Collection and recovery-Assessee deemed in default-Certificate to Tax Recovery Officer-Attachment and sale of immovable property-Time limit-Order of attachment twenty five years after assessment years-Barred by limitation-Notice of attachment was quashed.[S. 2(25), 2(44),117, 222,, 281B, Schedule II, R, 2, 4, 16, 68B, Art, 226]

The petitioner purchased the property and in possession and enjoyment of the properties since 2008.The order of attachment was received on July 13, 2009. The petitioner raised the objections against the notice, however there was no response from the Revenue. The petitioner filed the writ petition to quash the proceedings. Court held that the Assessment proceedings are initiated and finalised under the powers granted to an Assessing Officer defined in terms of section 2(25) whereas recovery in terms of the Second Schedule is by a Tax Recovery Officer, as defined in section 2(44) of the Act. There is thus a clear and categorical distinction between assessment and recovery under the Act. The definitions, nomenclature, titles, roles and powers of the two officers are separate and distinct. An Income-tax Officer is defined under section 2(25) and his appointment is in terms of section 117. With the issuance of a rule 2 notice, the procedure for recovery under the Second Schedule stands started. Once a certificate is drawn up under section 222, an assessee is stated to be ”in default” or is deemed to be in default in making a payment of tax. Such a statement is to be drawn in terms of rule 2 of the Second Schedule to the Act. Rule 4 talks about modes of recovery that are available to a Tax Recovery Officer to proceed to realise the amount in question, by (a) attachment and sale of the movable property, (ii) attachment and sale of the defaulter's immovable property, (c) by arrest and detention, and (d) by appointing a receiver for the management of his properties. A literal reading of rule 2 would result in a situation where any property of a defaulting assessee would fall and continue to be under a cloud, for all time, till such time the defaulter settles the arrears. However rule 68B of the Second Schedule stipulates a time limit for sale of the attached property. It provides that no sale of immovable property shall be made under this Part after the expiry of seven years from the end of the financial year in which the order giving rise to the demand for any tax, interest, fine, penalty or any other sum, for the recovery of which the immovable property has been attached. The scheme of recovery under the Second Schedule is time bound, sacrosanct and

must be enforced strictly, both qua the assessee as well as the Department. Allowing the petition the Court held that the scheme of rule 68B had long since expired and the Department had, admittedly not taken any action within the time provided. In the light of the statutory embargo under rule 68B, the attachment of the properties in question, 25 years from the lapse of the assessment years in question, was wholly impermissible in law. The attachments made after purchase of the properties by the petitioners for valuable consideration could not be sustained.(AY.1995-96 to 1998-99)(SJ)

Pradeep Alexander v. TRO (2022)448 ITR 720 (Mad)(HC)

Academic Charitable Environmental and Research Foundation v..TRO (2022)448 ITR 720 (Mad)(HC)

S. 220 : Collection and recovery-Assessee deemed in default-
Recovery of tax-Attachment and sale of immovable property-contents of proclamation-Reserve price-Auction of property-The auction notice clearly stated that the terms and conditions of the proposed auction could be downloaded from the website of the Income-tax Department or collected from the office of the Tax Recovery Officer-No violation-Order of attachment is valid.[S. 226, Rule 53 of Second Schedule. Art, 226]

Held, dismissing the writ petition, that the auction notice clearly stated that the terms and conditions of the proposed auction could be downloaded from the website of the Income-tax Department or collected from the office of the Tax Recovery Officer. There was no violation of rule 53(b). There was no irregularity committed by the Income-tax Department while auctioning the property. The Income-tax Department also made it very clear that the auction amount would be adjusted toward the tax liability and the interest thereon and the balance if any would be adjusted and payable towards the other stakeholders, namely, 234 time share holders, dues to the bank and the tax due to the Commercial Tax Department totalling to Rs. 95,02,968. Since the amount that was recovered from the auction sale was only Rs.3,38,03,500, the third respondent was also bound to pay the amounts due to the 234 time share holders, the Commercial Tax Department and the bank. These were the liabilities of the assessee which the third respondent had undertaken to discharge and therefore, there was no irregularity in the auction conducted by the Income-tax Department.

IGGI Resorts International Ltd. v. TRO (2022)447 ITR 718 / 215 DTR 145/ 329 CTR 257 (Mad)(HC)

S. 220 : Collection and recovery-Assessee deemed in default-Interest on interest-Incorrect declaration of income-Liable to pay interests [S. 139, 220(2) 234A, 234B, 234C, Art, 226]

The assessee failed to pay the interest in time. Instead, the assessee filed an application under section 220 of the Act, to waive the interest. The application was dismissed on December 28, 2016. It was only thereafter the assessee paid the amount quantified in the demand notice dated January 30, 2015 issued under section 156. On a writ petition to quash the order and

direct waiver towards interest due under section 220(2) the Court held that as the assessee had failed to pay the amount in time, the assessee was liable to pay the interest.(AY.2007-08)

Ravikumar Dhandhania v. ITO (2022)447 ITR 726 / 214 DTR 194 (Mad)(HC)

S. 220 : Collection and recovery-Assessee deemed in default-Stay of demand-Deposit of 20 Per Cent. of demand-Order is held to be justified [Art, 226]

Dismissing the petition the Court held that the Assessing Officer was justified in not exercising the discretion to grant unconditional stay or stay on payment of lesser amount than 20 per cent. of the tax demand. The Assessing Officer while rejecting the case of the assessee had recorded reasons in great detail. The Commissioner while rejecting the revision application had recorded reasons why the order passed by the Assessing Officer shall not be interfered with. There was no infirmity in the order passed by the Assessing Officer or by the Commissioner.(AY. 2015-16)

Mascot Construction Co. v. PCIT (2022)446 ITR 719 / 213 DTR 449/ 326 CTR 863 (Bom)(HC)

S. 220 : Collection and recovery-Assessee deemed in default-Stay of demand-Commissioner (Appeals) being Quasi-Judicial Authority is not bound by administrative circulars issued by Central Board Of Direct Taxes-Deposit of 20% of the outstanding demand is not mandatory-CIT(A) has to apply is mind independently-Matter remanded [S. 220(6), 246A Art, 226]

The assessee moved application for stay of demand. The AO directed the assseee to deposit 20% of tax in dispute relying on the Circular of CBDT dated July 31, 2017 (2017) 396 ITR 55 (St)). On writ the court set aside the order passed by the Assessing Officer to the effect that the assessee would not be treated as being in default if it deposited 20 per cent. of the outstanding demand and remanded the matter back to the Commissioner (Appeals) for a fresh decision in accordance with law after complying with the principles of natural justice on the prayer for stay made by the assessee and stayed the demand pursuant to the assessment order dated December 21, 2019 till such time. Matter remanded. Court observed that Commissioner (Appeals) being Quasi-Judicial Authority is not bound by administrative circulars issued by Central Board Of Direct Taxes. Referred PRCIT v. LG Electronics India Pvt. Ltd. [2018] 12 ITR-OL 334 (SC) (AY. 2017-18)

APR Jewellers Pvt. Ltd. v. CIT (Appeals) (2022)446 ITR 275/ 214 DTR 313/ 327 CTR 113 (Telangana)(HC)

S. 226 : Collection and recovery-Modes of recovery-Stay-Failure to deduct tax at source-Interest payment made to foreign bank-No financial hardship-Directed to deposit 20 per cent of total demand-DTAA-India-China.[S. 201(1) 201(IA), Art, 11(3), Art, 226]

AO passed and order under section 201(1)/201(1A) on account of failure on the part of Assessee to deduct TDS on interest payments to China Development Bank by relying upon Article 11(3) of India-China DTAA and subsequently, raised demand. The Assessee filed

stay application and AO rejected the same after relying upon CBDT OM No. F No. 404/72/92/-ITCC, dated 29-2-2016on the ground that stay could not be granted until 20 per cent of disputed demand was paid. Commissioner (Appeals) dismissed review application of assessee. On writ, the Court held that as the assessee had not suffered any operational losses, plea of hardship was not made out and therefore, the Court upheld the order of Commissioner (Appeals) dismissing the application and upheld the direction of AO directing assessee to deposit 20 per cent of total demand. Applied GE Capital Mauritius Overseas Investments v. Dy. CIT [2021] 127 taxmann.com 235/433 ITR 270 (Delhi)(AY. 2016 17)
Tata Teleservices Ltd. v. CIT (2022) 216 DTR 286/ 328 CTR 481 / 145 taxmann.com 142 /(2023)451 ITR 331 (Delhi)(HC)

S. 226 : Collection and recovery-Modes of recovery-Stay-Deduction at source-Interest-Bank deposits-Failure to deduct or pay-Application for stay of demand was dismissed-Directed to deposit 20 per cent of total demand-DTAA-India-China.[S. 201 (1), Art, 11(3), Art, 226]

Assessee-company had made interest payments to China Development Bank, which as per it was a bank wholly owned by Government of China.The assessee did not deduct tax at source on such interest in view of article 11(3) of India-China DTAA. Assessing Officer raised the demand under section 201(1)/201(1A) upon assessee on failure to deduct TDS. He rejected assessee's application for stay of demand on ground that as per CBDT OM No. F No. 404/72/92/-ITCC, dated 29-2-2016, he could not grant stay until 20 per cent of disputed demand was paid.Commissioner (Appeals) dismissed the application of assessee. On writ the court held that since assessee had not suffered any operational losses and plea of hardship as raised was not made out, order of Commissioner (Appeals) dismissing the application and upholding direction of Assessing Officer directing assessee to deposit 20 per cent of total demand was up held. (AY. 2016-17)
Tata Teleservices Ltd. v. CIT (2022) 216 DTR 286 / 145 taxmann.com 142 (Delhi)(HC)

S. 226 : Collection and recovery-Modes of recovery-Pendency of appeal before CIT(A)-Freezing of bank accounts and demand recovered-Directed to file application to expedite hearing before National Faceless Appeal Centre. [S. 246A, Art, 226]
The Assessing Officer recovered an amount of approximately Rs. 20 lakhs. When the appeal is pending before the CIT(A).On Writ the Court directed the petitioner to file an application before the National Faceless Appeal Centre with in two weeks and the Respondent was directed to decide the same with in four weeks thereafter.
Priti Nanda v.CIT (Appeals) (2022)446 ITR 513 (Delhi)(HC)

S. 220 : Collection and recovery-Assessee deemed in default-Adjustment of refund in excess of 20 Per Cent of tax in dispute-Held to be not valid-Directed to refund

adjustment made in excess of 20 per cent-Stay granted till disposal of appeal by CIT(A) [S. 156, 220(6), 245, Art, 226]

On writ the Court held that the refunds had been adjusted against outstanding tax demands by the Assessing Officer without mentioning that the assessee fell in the category mentioned in paragraph 4(B) of the office memorandum dated February 29, 2016. Without any order under section 245 having been passed the assessee was entitled to refund of adjustments made in excess of 20 per cent. of the disputed tax demands for the assessment year 2016-17. The restrictive stay order dated February 11, 2019 issued by the Assistant Commissioner granting stay to the assessee only till December 31, 2019 was in violation of the directions of the Central Board of Direct Taxes and earlier orders of court wherein it had been held that the Assessing Officer must grant stay till the disposal of the appeal before the Commissioner (Appeals).(AY.2016-17)

Aditi Infrabuild and Services Ltd. v. A CIT (2022)442 ITR 50 (Delhi) (HC)

S. 220 : Collection and recovery-Assessee deemed in default-High pitched assessment-Pendency of appeal before Commissioner (Appeals-Discretionary powers-Parameters to be complied with by Authorities on stay applications-Instructions of Central Board Of Direct Taxes binding on Authorities-Stay of demand granted till disposal of Appeals by Commissioner (Appeals)-First Appellate Authority has inherent powers to grant stay.[S. 143(3), 153A, 156, 220(3), 220(6),246A, 251(1), Art, 226]

High pitched assessment was made on the assessee. The assessee filed an appeal before the CIT(A). When the appeal was pending the assessee filed an application for stay before the PCIT. PCIT rejected the stay application. On writ allowing the petition, the Court held that the Principal Commissioner had not considered the matter in the proper perspective and had mechanically declined to grant stay of recovery of disputed demand as prayed for by the assessee. When the assessee had submitted to the Principal Commissioner that it was a high pitched assessment it could not have been dismissed by the Principal Commissioner by merely saying that the issue had been discussed threadbare during the assessment proceedings. The finding recorded by the Principal Commissioner was that the assessment order was passed by the Assessing Officer after granting sufficient opportunities and after due consideration of all the relevant aspects of the matter and, therefore, the issue of high pitched assessment need not be considered. The orders passed by the Principal Commissioner were set aside and he was directed to consider the application filed by the assessee under section 220(3) and 220(6) afresh in conformity with all the Central Board of Direct Taxes Instructions and the parameters laid down by providing an opportunity of being heard to the assessee and pass orders in accordance with law. Court also held that the assessees could file applications before the Commissioner (Appeals) seeking appropriate relief. Powers to grant stay of recovery can be implied as inherent power of the first appellate authority.(AY. 2010-11 to 2020-21)

Harsh Dipak Shah v. UOI (2022) 444 ITR 184 / 211 DTR 399/ 325 CTR 585 / 287 Taxman 55 (Guj)(HC)
Avani Petrochem (P) Ltd v.UOI (2022) 211 DTR 399/ 325 CTR 585 / 287 Taxman 55 (Guj)(HC)
Dakshay Hasmukhbhai Thakkar v.UOI / 211 DTR 399/ 325 CTR 585 / 287 Taxman 55 (Guj)(HC)

S. 220 : Collection and recovery-Assessee deemed in default-Stay-Application for stay cannot be rejected without giving reasons-Directed to withdraw the attachment of bank accounts forthwith. (S. 226(3), Art. 226]

The assessment was completed adding the amount deposited in bank as income of the assesseee. The assessee filed an application for stay of recovery. The Assessing Officer directed the assessee to deposit 20 percent of tax in dispute relying on circular dated July 31 st, 2017 (2017) 396 ITR 55 (St). The Assessing Officer also attached Bank accounts of the assessee by issuing notice u/s 226(3) of the Act. On writ the Court held that the assessee was required to be heard, and there should be due application of mind before a decision is taken on the prayer for stay. The order did not indicate or disclose any application of mind on the part of the respondent in considering the prayer of the assessee. The order was not valid. Directed to withdraw the attachment of Bank accounts forthwith.(AY. 2018-19)

Kallakuri Dhana Lakshmi Katyayani (Mrs.) v. ITO (2022) 444 ITR 315 (Telangana)(HC)

S. 220 : Collection and recovery-Assessee deemed in default-Settlement Commission-Interest payable up to date of order accepting application.[S. 220(2) 245D(4), Art, 226]

Allowing the petition the Court held that interest under section 220(2) was payable from January 5, 1997 which was the 36th day after the assessment order dated November 27, 1996 was passed, up to April 9, 1997 when the assessee's application came to be accepted under section 245D(1) of the Act. (AY. 1985-86 to 1996-97)

Karia Erectors Pvt. Ltd. v. UOI (2022) 444 ITR 86 (Bom)(HC)

S. 220 : Collection and recovery-Assessee deemed in default-Stay-Failure to pay stipulated 15 percent of demand-Appeal pending before Commissioner (Appeals)-Directed to file fresh appeal for stay of demand before Commissioner (Appeals) [S. 143(3) 144B, 156,220(6), 246A, Art, 226]

The petition filed before the Income-tax Officer under section 220(6) by the assessee for stay of the demand was rejected on the ground that the assessee had not deposited 15 per cent. of the disputed demand. On a writ the court observed that since the assessee's appeal was pending before the Commissioner (Appeals), the assessee could file a fresh application for stay before the appellate authority hearing the appeal and the Commissioner (Appeals) was to expeditiously consider such application in accordance with law.(AY. 2018-19)

Thrissur Expressway Ltd. v ITO (2022) 444 ITR 60 (Telangana)(HC)

S. 220 : Collection and recovery-Assessee deemed in default-Stay-Paid 20 percent of disputed demand-Assessee cannot be held to be assessee deemed to be in default-

Adjustment of refund without giving an intimation u/s 245 of the Act is held to be bad in law-Directed to refund with accumulated interest.[S. 245, Art, 226]

The assessee has paid the demand of 20 percent of tax in dispute. The Assessing Officer adjusted the refund without giving intimation under section 245 of the Act. On writ allowing the petition the Court held that the Assessing Officer shall grant stay of demand where outstanding demand is disputed on petitioner paying 20 per cent of disputed demand hence the petitioner cannot be treated as deemed to be an assessee-in-default for recovery provisions. Court also held that where petitioner was entitled to refund from revenue and revenue sought to adjust this refund amount against demand that it had against petitioner, however, no intimation under section 245 was given before making adjustment, impugned adjustment of refund was unjustified, hence, petitioner would be entitled to refund of entire amount together with accumulated interest, if any, in accordance with law**.** (AY. 2015-16, 2016-17, 2017-18)

Bharat Petroleum Corporation Ltd. v. ADIT (2022) 284 Taxman 647 (Bom.)(HC)

S. 220 : Collection and recovery-Assessee deemed in default-Interest-Order of CIT(A) directing to withdraw investment allowance was set aside by the Tribunal-Settlement Commission reducing the interest payable by assessee-Writ of revenue to set aside the order of Settlement Commission was dismissed.[S. 32A, 145, 220(2), 245D(4), Art, 226]

The assessment order was rectified under section 154 on July 27, 1992 revising the total income after allowance of set off of unabsorbed investment allowance brought forward from the assessment years 1986-87, 1987-88 and 1988-89. The assessee made an application under section 245C before the Settlement Commission which passed an order under section 245D(4). The Assessing Officer gave effect to the order under section 245D(4) and also calculated the interest payable under section 220(2). The quantum of interest was rectified and a revised order was passed. The assessee sought rectification of the order passed by the Settlement Commission on the ground that since the order under section 245D(4) was silent on the point of charging interest under section 220(2) it should be considered to have been waived. The Settlement Commission held that it did not consider it to be a good case for waiver of interest chargeable under section 220(2). However, regarding the method of charging of interest the Settlement Commission directed the Assessing Officer to take the income as determined by him in his order dated July 27, 1992, adjust it in accordance with its order under section 245D(4) but without withdrawing the benefit of set off of brought forward investment allowance under section 32A. The Department filed petition contending that the Settlement Commission could not have granted the assessee the benefit of set off of brought forward investment allowance. The Settlement Commission rejected the application filed by the Department. On a writ dismissing the petition, that according to the proviso to sub-section (2) of section 220, once the amount on which interest was charged got extinguished the liability of the assessee to pay interest on such amount would also be extinguished. The order of the Commissioner (Appeals) directing the Assessing Officer to withdraw the investment allowance granted under section 32A was set aside by the Tribunal. Therefore, interference with the orders passed by the Settlement Commission reducing the liability of the assessee to pay interest under section 220(2) would result in directing the assessee to pay interest on an amount which had been extinguished and consequently would result in miscarriage of justice.(AY.1989-90)

UOI v. Dodsal Ltd. (2022)441 ITR 47/ 211 DTR 189 / 325 CTR 273/ 286 Taxman 33 (Bom)(HC)

S. 220 : Collection and recovery-Assessee deemed in default-During pendency of appeal entire demand was recovered-High Court directed the CIT(A) to decide the appeal on merits in accordance with law, expeditiously, preferably within two months from the date of presentation of copy of the order.[S. 144, 147, 220(6), Art, 226]

The revenue recovered entire demand when the appeal was pending.The assessee filed writ petition contending that during pendency of her stay application under section 220(6), demand had been recovered from her and, therefore, demand recovered may be directed to be returned. High Court held that it was an admitted case of parties that demand pursuant to assessment had already been recovered, therefore, no order was required to be passed at this stage for return of amount recovered unless assessee succeeded in appeal. High Court directed the CIT(A) to decide the appeal on merits in accordance with law, expeditiously, preferably within two months from the date of presentation of copy of the order.

Vimal Tyagi (Smt(v. ITO (2021) 133 taxmann. com 290 (All) (HC)
Editorial : While disposing the SLP direction was issued to dispose the pending appeal expeditiously preferably with in a period of two months from the date of receipt of the order; Vimal Tyagi (Smt) v. ITO (2022) 284 Taxman 627 (SC)

S. 221 : Collection and recovery-Penalty-Tax in default –Limitation-Pendency of writ petition-Period to be excluded-Order was not barred by limitation. [S. 221(1), Rule, 688 of the II schedule (Procedure for Recovery of Tax) Art,226]

Held that considering the facts of the case while counting the period of limitation, period of pendency of writ petition is to be excluded. Writ on the ground of limitation was dismissed.

Sujatha. T.S. v. TRO (2022) 215 DTR 380/ 327 CTR 476 (Ker)(HC)

S. 221 : Collection and recovery-Penalty-Chartered flying of small aircrafts-Tax in default-Financial difficulties-Not remitting the tax deducted at source [S. 195]

Held that financial difficulties may not be very relevant to justify non-remittance of TDS unless assessee also shows that they were not able to pay payments on which TDS was made. Levy of penalty is justified. (AY. 2013-14, 2014-15)
Deccan Charters (P.) Ltd. v. DCIT (TDS) *(*2022) 194 ITD 59 (Bang) (Trib.)

S. 226 : Collection and recovery-Modes of recovery-Priority over debts-FDR to secure payment of debt-Secured creditor-Priority over Income Tax department who is an unsecured creditor. [Securities Contracts (Regulation) Act, 1956, 8, 9]

The plaintiff company is engaged in the business of providing financial fcailities to its clients and customers. Borrower has placed Fixed deposit recipts as security. Income Tax

Department issued notice u/s 226(3) of the Act to Bank of Baroda to hand over the Fixed deposit receipt towards tax liability of the assessee. On a suit filed by the Lender the Court held that amount had been placed in FDR by defendant no. 2 to ensure repayment of debt owed by it to plaintiff and lien had been marked on aforesaid FDR in favour of plaintiff company, plaintiff being a secured creditor in view of lien possessed by plaintiff on said FDR will have a priority over Income Tax Department, who is an unsecured creditor. Income Tax Department's preferential right to recovery of debts over other creditors is confined only to ordinary or unsecured creditors, it would not extend to secured creditors. Therefore, plaintiff company would be entitled to amounts under said FDR.

IFCI Factors Ltd. v. Bank of India (2022) 289 Taxman 654 (Delhi)(HC)

S. 226 : Collection and recovery-Modes of recovery-
Garnishee notice-Amounts taken pursuant to garnishee notice when no liability to pay income tax dues are liable to be refunded [S. 226 (3), Art. 226]

Dismissing the appeal of the Revenue against the order of the Single judge the Court held that when garnishee proceedings are initiated by the Revenue, any amounts collected without notice to the assessee are liable to be refunded if there is no obligation to make payment of taxes since the assessment order is set aside in appeal. Observation of single judge against third respondent was expunched.

ACIT v.Suntec Business Solutions (P) Ltd. (2022) 324 CTR 444 / 209 DTR 348 (Ker) (HC)

S. 226 : Collection and recovery-Modes of recovery-Attachment and sale of immoveable property-Auction sale-Forfeiture of amount-Mistake in crediting the amount by mistake-Not entitle to credit wrongly credited in 26AS-Writ petition dismissed [SCH II, part III Rule 57, 58,Form 26AS, Art, 226]

The petitioner deposited the amount as security deposit in Auction sale. The petitioner has not deposited the balance amount hence the amount was forfeited. The amount was credited in 26AS of the assessee. The claim of assessee was rejected. The assessee filed writ petition to get the amount shown as credited in 26AS. Dismissing the petition the Court held that the amount forfeited and not credited to the petitioner. The fact that the amount had been credited in the amount of the petitioner and the same was reflecting in form 26AS would not change the legal position.

Ashwin Kumar v. ITO (2022) 445 ITR 474 (P& H)(HC)

S. 226 : Collection and recovery-Modes of recovery-Attachment of properties and Bank accounts and stock-in-trade-Pendency of appeal before Appellate Tribunal-Directed to with draw attachment on deposit of 20 percent of demand-Bank directed to withhold 50 percent of deposits. [S. 153C, 226(3) 254 (2A),Art, 226]

The appeals filed by the Department and cross-objections filed by the assessee were pending before the Tribunal. However, only an amount was recovered from the assessee's bank account. During pendency of the appeals and cross-objections before the Tribunal, the assessee filed a stay application before the PCIT who directed the assessee to pay 50 per cent. of the demand for considering his stay till disposal of the appeals. The assessee did not comply with his order. On a writ petition contending that as his properties including the stock-in-trade were attached, his business activities were completely jeopardized and hence he was unable to generate any revenue for payment of the tax dues. Court held that the attachment of the stock-in-trade of the assessee should be withdrawn to enable him to pay the tax dues in terms of the first proviso to section 254(2A). In view of the statement made by the Department itself that not much money could be appropriated through attachment of the bank accounts, attachment of the bank accounts could be withdrawn. The assessee should deposit 20 per cent. of the tax dues following the order passed by the first appellate authority. On such deposit, attachment of assessee's bank accounts and the stock-in-trade should stand withdrawn forthwith. However, post-withdrawal of attachment if the assessee deposited any amount into the bank accounts, the bank authorities should ensure that 50 per cent. of such deposit was maintained in the accounts till such time as was considered necessary.*(*AY.2007-08, 2008-09, 2009-10)

Joji Reddy Yeruva v. PCIT(2022)441 ITR 137/138 taxmann.com 481 (Telangana) (HC)

S. 234A : Interest-Default in furnishing return of income-Waiver of interest-Properties vesting in Official Assignee-Interest waived on the facts of the case.[S. 234B 234C, Presidency Towns Insolvency Act, 1909, S. 7]

The assessee informed the official assignee that capital gains may accrue from the sale of the assets, and that capital gains tax should be paid in respect thereof. However, the official assignee did not take any steps in such regard. In those circumstances, the assessee filed an application to direct the official assignee to remit the capital gains tax so as to avert interest and penalty liabilities in respect thereof. The application was disposed of by the court directing the official assignee to set apart 20 per cent. of the insolvent's share of the sale proceeds from the sale of the relevant immovable asset towards capital gains tax. On the basis of the order, 20 per cent. was initially parked in a Reserve Bank of India account and subsequently transferred to an interest bearing account pursuant to an order dated March 1, 2013. By notices issued between March 16, 2015 and February 22, 2016, the Income-tax Department informed the official assignee that the Income-tax liability of the estate of the insolvent had not been discharged. Eventually, ex parte assessment orders in respect of AY.s 2008-09 to 2018-19 were issued. Upon obtaining the permission of the court, the official assignee remitted tax on March 29, 2016, as regards AY.s 2008-09 to 2013-14; on December 15, 2016, as regards the AY. 2014-15; on December 21, 2016, as regards AY.s 2015-16 and 2016-17; and on March 15, 2018, as regards AY.s 2017-18 and 2018-19. The Income-tax Department issued a demand notice on January 5, 2017 claiming interest under sections 234A, 234B and 234C of the Income-tax Act, 1961, for delayed filing of returns, remittance of tax returns and advance tax. An aggregate sum of Rs.2,42,27,764 was claimed towards interest. On an application under rule 1 of Order II of the Insolvency Rules read with section 7 of the Presidency Towns Insolvency Act, 1909 praying for waiver of the interest in full and order for immediate release of the entire amount of Rs. 2,42,27,764 Court held on account of the following reasons : the ex-insolvent/assessee was not in a position to remit Income-tax; she took all possible measures to procure payment of tax; and the debatable nature of and legitimate doubts regarding the tax liability of the estate of an insolvent, the

assessee was entitled to a waiver of interest and penalty as regards non-payment of advance tax. The Income-tax Department was directed to recompute the interest liability on the amounts remitted in respect of the respective AY.s at the rate of 6 per cent. per annum instead of 1 per cent. per month from the dates specified or indicated above, as the case may be, without levying compound interest, penalty, or interest or penalty for non-payment of advance tax or for delayed filing of returns, and make a revised demand on such basis on the official assignee. Upon receipt thereof, the official assignee was directed to pay the sum within a period of 30 days from the date of receipt of such revised demand notice. The official assignee was further directed to pay the surplus, if any, after discharging the aforesaid liability to the assessee/ex-insolvent.(AY. 2008-09 to 2018-19) (SJ)

T. R. Bhuvaneswari (Mrs.) v. Official Assignee High Court, Madras (2022)443 ITR 335 (Mad) (HC)

S. 234A : Interest - Default in furnishing return of income - Matter remanded .[S. 139(1) , 234B]

Held that if the assessee had filed its return of income three days before the due date prescribed under section 139(1) as claimed by it, the levy of interest under section 234A would be wrong. Since both the parties agreed that the matter required verification, it was restored to the Assessing Officer for a decision afresh. The charging of interest under section 234B , being consequential in nature, was dismissed as infructuous.(AY. 2015-16)

Dow Chemical International P. Ltd. v .ITO (2022)100 ITR 82 (Mum)(Trib)

S. 234B : Interest-Advance tax-Non-Resident-Waiver of interest-Not liable to pay interest [S. 234C Art, 226]

The assessee is non-resident. The assessee filed application before Chief Commissioner of Income-tax for waiver of interests levied under section 234B,, 234C of the Act. Chief Commissioner of Income-tax rejected the petition. On writ allowing the petition the Court held that the assessee was not liable to pay interest under sections 234B and 234C. In the case of assessee's sister concern, which was also engaged in similar dredging contracts the Department's appeal before the Tribunal against the order passed by the Commissioner (Appeals) for the assessment year 1999-2000 with regard to the levy of interest under sections 234B and 234C was dismissed. The Department's appeal filed before the High Court was also dismissed and this order was affirmed by the Supreme Court. The order of the Chief Commissioner was set aside.(AY.2000-01)(SJ)

Van Oord ACZ BV v. Chief CIT (2022)447 ITR 242 (Mad)(HC)

S. 234B : Interest - Advance tax - Not liable to interest [S. 234A]

Held, that no interest under section 234B of the Act was leviable, for the year under consideration. (AY. 2011-12)

Global Hospitality Licensing Co. Sarl v. Dy. CIT (IT) (2022)97 ITR 57 (SN) (Mum) (Trib)

S. 234C : Interest - Deferment of advance tax -Nil taxable income – No liability to deposit advance tax – Not liable to pay advance tax on estimated income [S. 11]

Held that as per provisions of section 234C, interest is levied either on failure to pay advance tax by assessee or on shortfall in payment of advance tax as compared to tax due on returned income . Where assessee-trust at relevant time of deposit of advance tax had NIL taxable income, there was no liability to deposit any advance tax. Therefore, no default could be attributed to assessee for non-deposit of advance tax while estimating its income and no interest would be chargeable under section 234C of the Act . (AY. 2011-12 to 2014 -15)
ACIT v. Navajibhai Ratan Trust (2022) 213 DTR 25 / 217 TTJ 137 / 140 taxmann.com 157 (Mum)(Trib)

S. 234C : Interest - Deferment of advance tax – Not applicable on assessed income but returned income.
The Tribunal held that the interest shall apply on the returned income and not assessed income. The issue of interest was consequential and thus, was not considered.(AY. 2013 -14)
United Spirits Ltd. v. Dy. CIT (2022)97 ITR 272 (Bang) (Trib)

S. 234D : Interest on excess refund-Provision inserted from 1-6-2003 would apply to all regular assessments made on or after 1-6-2003 irrespective of assessment year involved-Liable to pay interest.
Held that provision of section 234D inserted from 1-6-2003 would apply to all regular assessments made on or after 1-6-2003 irrespective of assessment year involved. The assessee was liable to pay interest on excess refund amount received by it as contemplated under section 234D during year (AY. 2002-03)
CIT v. Lakshmi Vilas Bank Ltd. (2022) 287 Taxman 333 / 113 CCH 336 (Mad.)(HC)

S.234E: Fee-Default in furnishing the statements-Non-filing of TDS statement-Effective from 1-6-2015-Levy of late fee invalid [S. 200A, Art 226]
The Petitioner had not filed its statements for tax deducted at source for AYs. 2012-13 to 2014-15. The late fee u/s. 234E was levied. On appeal, the levy of late fee was upheld. The Petitioner filed writ petitions before the Kerala High Court. The High Court held that in M/s. Sarala Memorial Hospital v. UOI and Anr. (W.P. (C) No. 37775 of 2018) involving identical issue, it was held that amendments made u/s. 200A for levy of late fee u/s. 234E were effective from 1st June 2015. Hence, prior to that date, late fee for non-filing of statement of taxes deducted at source could not be levied. The High Court thus allowed the writ petition. As regards the objection of the Revenue that an appeal filed by the assessee was dismissed and therefore, the writ petition could not survive, the High Court held that levy of late fee is not applicable for the periods prior to 1st June 2015 and hence, the order of appellate authority was perverse and thus, warranted interference under Article 226 of the Constitution of India.
Headmaster, Government Upper Primary School v. ITO (2022) 218 DTR 38 (Ker)(HC)

S.234E: Fee-Default in furnishing the statements-Tax deducted at source-Provision applicable from June 1, 2015-Orders levying late fee for prior periods not sustainable-Alternative remedy-Lack of jurisdiction-Writ is maintainable.[S. 200A, Art, 226]

On a writ petition challenging the levy of penalty under section 234E of the Income-tax Act, 1961 for delay in filing the statement of tax deducted at source by the assessee, the Court held that the jurisdiction to levy late fee under section 234E arose only from June 1, 2015 and not earlier. The judgment in Sarala Memorial Hospital v. Union of India W. P. (C) No. 37775 of 2018 dated December 18, 2018 had become final and was binding upon the authorities.Orders were set aside.(AY. 2012-13 to 2014-2015) (SJ)

JIJI Varghese v. ITO(TDS) (2022)443 ITR 267/ 213 DTR 22/ 327 CTR 610 (Ker)(HC)

S.234E: Fee-Default in furnishing the statements-Provision for levy of late fee for delay in filing-Valid-Intimation calling for payment of late fee for delaying filing of return-Not sustainable for periods prior to June 1, 2015 [S. 200A, Art, 226]

During FY 2012-13 and 2013-14, TDS was timely deducted and deposited by Petitioner companies, however, there was delay in filing quarterly returns. Revenue processed belated quarterly returns under section 200A and issued intimation that Petitioner was under statutory obligation under section 234E to pay late fee for delayed filing of TDS return. On writ petitions against the said intimations, a single judge declared the intimations illegal. On appeal before the Division Bench:

Since provisions of section 200A were amended to enable computation of fee payable under section 234E at time of processing of return and said amendment came into effect from 1-6-2015 (in view of CBDT Circular No. 19 of 2015 dtd. 17-11-2015), intimations issued under section 200A dealing with fee for belated filing of TDS returns for period prior to 1-6-2015 were invalid and were to be set aside.

Olari Little Flower Kuries (P.) Ltd. v. UOI (2022) 440 ITR 26/210 DTR 145/ 324 CTR 616 (Ker) (HC)

S.234E: Fee-Default in furnishing the statements- Technical breach – Tax deposited within due date – Technical error in filing statement – No loss to revenue – Levy of penalty is not justified .[194IA, 200A(1), Form, 26AS, 26QB]

Held that the assessee had deposited tax deducted at source under section 194-IA of the Act and accordingly filed the statement of tax deducted at source within due date from the time when the immovable property was transferred, but committed a technical default while filing the statement of tax deducted at source resulting denial of credit for tax deducted at source, compelling the assessee to deposit the sum again with interest, the assessee could not be penalized for late filing of the revised statement of tax deducted at source under section 234E of the Act. Had the assessee at the time of initial deposit of tax deducted at source mentioned the correct permanent account numbers, there would have been no question of levy of interest under section 234E of the Act Levy of penalty was deleted . (AY.2015-16)

G. B. Builders v. ACIT CPC (TDS) (2022) 95 ITR 84 (SN)(Ahd) (Trib)

S.234E: Fee-Default in furnishing the statements-Defaults in Financial year 2015-16 after 1-6-2015 — Levy of late justified . [S. 200A(1)(c) , Form 24Q]

Held that The Commissioner (Appeals) was justified in confirming the late fee levied by the Assessing Officer under section 200A read with section 234E since the defaults made by the assessee were after June 1, 2015.(AY.2016-17)

Government Secondary School Kumharia v. ACIT, CPC (TDS) (2022)95 ITR 80 (SN)(Jaipur) (Trib)

S.234E: Fee-Default in furnishing the statements-Intimation for periods prior to 1-6-2015 — Not sustainable.[S.200A(1)]

Held that the orders passed by the Commissioner (Appeals) were not sustainable and the late fee levied under section 234E by intimation issued under section 200A of the Act, for the period prior to June 1, 2015, was to be deleted for the assessment years in question.(AY.2015-16, 2016-17)

Govershan Venture Pvt. Ltd. v. ACIT (2022)95 ITR 79 (SN)(Mum) (Trib)

S.234E: Fee-Default in furnishing the statements-Statements of tax deducted at source-Levy of fees for Assessment Years 2013-14, 2014-15 and 2015-16 not justified-CIT (A) erred in not condoning the delay.[S.200A, 250]

Tribunal held that Levy of fees for Assessment Years 2013-14, 2014-15 and 2015-16 not justified. Tribunal also held that CIT (A) was erred in not condoning the delay..(AY.2013-14 to 2015-16)

Elite India Constructions P. Ltd. v.CIT (Appeals) (2022)93 ITR 20 (SN)(Bang) (Trib)
Sameer Granites Pvt. Ltd. v. ACIT (CPC) (TDS) (2022)93 ITR 33 (SN)(Bang) (Trib)

S.234E: Fee-Default in furnishing the statements-Amendment in section 200A by way of insertion of clause (c) was only with effect from 1-6-2015-Levying late fee for f period prior to 1-6-2015 is not valid [S. 200A]

Held that amendment in section 200A by way of insertion of clause (c) was only with effect from 1-6-2015 and therefore no fees would be payable by assessee for any period prior to 1-6-2015. Accordingly levying late fee prior to 1-6-2015 would not be sustainable. (AY. 2013-14 to 2015-16)

Bhaskar Roy. v. ITO (2022) 193 ITD 668 (Kol) (Trib.)

S. 237 : Refunds-Intimation-Right of assessee-Failure by Department to process return within prescribed time-Direction issued to Department to grant refund with interest.[139, 140. 140A, 143(1), 244A, Art, 226]

The assesseee filed writ petition seeking directions to the Department to issue the refund under section 237 as claimed in the return of income filed under section 139 with the applicable interest under section 244A for the assessment year 2015-16. Allowing the petition the Court held that since the Assessing Officer had failed to process the return of the assessee filed under section 139 in accordance with law within the prescribed time, the return as filed would have to be treated as “deemed intimation” and an order under section 143(1). If the Department did not refund the amount due and payable to the assessee immediately, interest on the refund amount would accrue. Consequently, the Department was directed to refund the excess tax paid by the assessee with interest under section 244A expeditiously.

Court observed that the principle of unjust enrichment proceeds on the basis that it would be unjust to allow a person to retain a benefit at the expense of another person. Relied on Mafatlal Industries Ltd. v. UOI (1998) 111 STC 467 (SC) and also Court on its own motion v. CIT (2013) 352 ITR 273 (Delhi)(HC)*(*AY.2015-16)

M. J. Engineering Consultants P. Ltd. v ITO (2022)449 ITR 322 / 217 DTR 273/ 328 CTR 462 (Delhi)(HC)

S. 237: Refunds-Refunds due but issue pending appeal in the Apex Court-Refund allowed.[S.240, Art, 226]

Refunds due to the assessee are bound to be made with interest even if the issue on the basis of which the refund is due is not settled and is pending before the Supreme Court. However, the refund will be subject to the orders of the Supreme Court.(AY. 1996-1997-2016-2017)

Amadeus IT Group SA v. ACIT (2022) 325 CTR 246 / 210 DTR 78 (Delhi)(HC)

S. 237 : Refunds-Reassessment-Failure to file returns within time-Notice of reassessment must be issued-Procedure laid down in Income-Tax Act must be followed by Income-Tax Authorities-Directed to examine the claim of refund within a period of three months.[S. 119, 147, 148, Art, 226]

Court held that where no return was filed, it was incumbent on the part of the Assistant Commissioner or the jurisdictional Assessing Officer to have issued a notice under section 148 of the Act to the assessee within the time prescribed under the Act, in which case, the question of the assessee filing an application before the Principal Commissioner under section 119 of the Act would not have arisen at all. Where the law mandates a particular thing to be done in a particular manner, it is incumbent on the part of the Income-tax authorities to follow such procedure. Failure to issue a notice under section 148 of the Income-tax Act, 1961 cannot be to the prejudice of the assessee, if ultimately it is found that the assessee was entitled to a refund. The respondents were directed to examine the refund claim independently and pass appropriate orders within a period of three months from the date of receipt of a copy of this order. (SJ) (AY.2011-12)

R. Pannerselvam v. PCIT (2022)442 ITR 376 (Mad) (HC)

S. 240 : Refunds-Appeal –Depreciation-Amount deposited when the appeal was pending before ITAT-Failure to pass fresh assessment order officer-Directed to refund excess amount deposited after deduction tax liability on depreciation allowance [S. 143(3), 153, Art, 226]

During scrutiny, Assessing Officer made certain disallowances and passed final assessment order. Tribunal stayed said order and directed assessee to deposit an amount of Rs. 10 crores. Later, matter was remanded to Assessing Officer. As per remand order, Assessing Officer was required to pass assessment order by 31-3-2017. The assessee was not granted the refund of the amount. On writ the Court held that since time limit for passing fresh assessment order had expired and assessee admitted disallowance with respect to depreciation before Tribunal,

revenue was directed to refund excess amount deposited by assessee after deducting tax liability with respect to depreciation disallowance. (AY. 2009-10)

BMW India (P) Ltd v. Dy. CIT (2022) 289 Taxman 39 /(2023)) 450 ITR 695 (P& H)(HC)

S. 240 : Refunds-Appeal effect order-Directions to refund with interest

An appeal effect order having been passed the court directed the Assessing Officer to issue the refund with interest.

Mosaic India Pvt. Ltd. v.PCIT (2022)441 ITR 404 (Delhi)(HC)

S.241A: Refunds-Withholding of refund in certain cases--Mere issue of notice under Section 143(2) not a ground for withholding refund-Entitled to refund with interest till date of refund of amount withheld except tax payable on disputed amount[S 10AA, 115JB,143(2),241(1),Art,226]

On writ allowing the petition the Court held, that refund could not have been withheld just because a notice under section 143(2) had been issued for verification of the assessee's claim for deduction under section 10AA. The order passed under section 241A against the assessee was a generic order and no attempt had been made by the respondents to substantiate how the grant of the refund was likely to adversely affect the Department. Therefore, the order passed under section 241A was quashed and the matter was remanded back to the Assistant Commissioner. The assessee was entitled to refund with interest till the date of refund of the amount withheld except for the tax payable on the disputed amount (of claim for deduction under section 10AA) under section 115JB and under the normal provisions of the Act. Accordingly, the Assistant Commissioner was directed to pass a fresh order under section 244A.(AY.2020-21)

Trueblue India LLP v.Dy. CIT (2022)447 ITR 500/ 289 Taxman 522 (Delhi)(HC)

S.241A: Refunds-Withholding of refund in certain cases- Estimated tax liability-Revenue neutral-Method of accounting-Income offered for tax when services were rendered-Withholding of tax is held to be not valid [S. 143(3), 145]

Held that since petitioner followed a consistent accounting policy to show unearned revenue as current liability in its books of account and offered it for tax as and when services were rendered, transaction in effect being revenue neutral would not affect revenue's interest. Accordingly withholding of tax without taking into account financial wherewithal of petitioner was not founded on cogent grounds and refund claimed by petitioner was directed to be released. (AY. 2018-19)

Ericsson India (P) Ltd v. ACIT (2022) 287 Taxman 230/ 217 DTR 414/328 CTR 649/ 113 CCH 330 (Delhi)(HC)

S. 244A : Refunds-Interest on refunds-Excess advance tax and TDS-Delay in filing refund application was condoned-Period when application was pending adjudication before writ Court could not be attributed to department-Assessee was not entitle interest on refunded amount for said time period. [S. 119(2)(b), Art, 226]

Assessee co-operative society paid excess advance tax towards TDS. Assessee filed return of income but did not file refund application towards excess tax paid. Later on, assessee filed an application under section 119(2)(b) for condoning delay in filing refund application which was rejected by CBDT. Writ Court allowed assessee's entitlement for condonation of delay and granted refund. Assessee contended that it was also entitled for interest on refund under section 244A for period when application was pending before Writ Court. Court held that what happened in interregnum could not prejudice assessee and should also not prejudice department by directing payment of interest for delay period. Since there was no delay attributable to department, assessee could not be allowed interest on refunded amount of advance tax for such period of pendency of petition before High Court. (AY. 1997-98)

Pala Marketing Co-operative Society Ltd. v. CIT *(*2022) 289 Taxman 271 (Ker)(HC)

S. 244A : Refunds-Interest on refunds-Excess advance tax and TDS-Delay in filing refund application was condoned-Period when application was pending adjudication before writ Court could not be attributed to department-Assessee was not entitle interest on refunded amount for said time period. [S. 119(2)(b), Art, 226]

Assessee co-operative society paid excess advance tax towards TDS. Assessee filed return of income but did not file refund application towards excess tax paid. Later on, assessee filed an application under section 119(2)(b) for condoning delay in filing refund application which was rejected by CBDT. Writ Court allowed assessee's entitlement for condonation of delay and granted refund. Assessee contended that it was also entitled for interest on refund under section 244A for period when application was pending before Writ Court. Court held that what happened in interregnum could not prejudice assessee and should also not prejudice department by directing payment of interest for delay period. Since there was no delay attributable to department, assessee could not be allowed interest on refunded amount of advance tax for such period of pendency of petition before High Court. (AY. 1997-98)

Pala Marketing Co-operative Society Ltd. v. CIT *(*2022) 289 Taxman 271 (Ker)(HC)

S. 244A : Refunds-Interest on refunds-Reduction in taxable income-Eligible on the sum refundable due to recomputation [S. 220(2) 234D, 244A(1)(b)]

The assessment of the aassessee resulted in to reduction of taxable income after setting-off brought forward losses. The assessee was entitle to refund of sum deposited as interest u/s 234D and section 220(2) of the Act. The AO has not granted the refund. On appeal the CIT(A) affirmed the order of AO. Tribunal allowed the appeal of the aassessee. On appeal by the Revenue the Court held that if the sum is refundable to the assessee on recomputation of its taxable income, the assessee is eligible for interest. Referred UOI v. Tata Chemicals Ltd (2014) 4 SCC 335 (ITA No. 1447 / 2018 dt 4-8 2022)

PCIT v. Punjab & Sind Bank (2022)Bank (2022)447 ITR 289/ 218 DTR 231/ 328 CTR 874 / (2023) 290 Taxman 479 Delhi)(HC)

S. 244A : Refunds-Interest on refunds-Protective assessment-Disputed tax settled under Direct Tax Vivad Se Vishwas Scheme-Order passed granting refund-Entitle to refund and interest [S. 154, 237, Direct Tax Vivad Se Vishwas Scheme, Art, 226]

Allowing the petitions the Court held that the assessee could not have been taxed twice on the same income. The Department had also not disputed that the assessee had settled the tax dispute under the Vivad se Vishwas scheme for the assessment year 2011-12 as a consequence of which the tax offered and paid by it during the assessment year 2014-15 had become excess. The Court directed the Department to ascertain the correct amount and refund the amount paid in excess for the assessment year 2014-15 by the assessee along with interest under section 244A.(AY.2011-12, 2014-15)(SJ)

Ganam Homes and Estates Pvt Ltd v. Dy. CIT (2022)445 ITR 522 /220 DTR 223 / 329 CTR 630/ 289 Taxman 227 (Mad)(HC)

RPD Earth Movers Pvt. Ltd. v. Dy. CIT (2022)445 ITR 522 //220 DTR 223 / 329 CTR 630 (Mad)(HC)

S. 244A : Refunds-Interest on refunds-Period between date of Court order and actual receipt of refund-Department directed to pay interest [S. 237,Art, 226]

In an earlier petition the court in its order dated March 18, 2021 had directed the Department to refund to the assessee under section 237 of the Income-tax Act, 1961 the amount as determined in the order dated October 2, 2019 with interest under section 244A within ten days from the date of receipt of the court order. The assessee stated to have received the directed amount of refund with interest only on May 28, 2021 and sought for interest until such date after October 2, 2019. On a writ petition allowing the petition the court directed the Department to pay the applicable interest to the assessee for the period April 2018 to May 28, 2021.(AY. 2018-19)

Ingenico International India Pvt. Ltd. v. JCIT (2022) 444 ITR 236 (Delhi)(HC)

S. 244A : Refunds-Interest on refunds-Period between date of Court order and actual receipt of refund-Department directed to pay interest [S. 237,Art, 226]

In an earlier petition the court in its order dated March 18, 2021 had directed the Department to refund to the assessee under section 237 of the Income-tax Act, 1961 the amount as determined in the order dated October 2, 2019 with interest under section 244A within ten days from the date of receipt of the court order. The assessee stated to have received the directed amount of refund with interest only on May 28, 2021 and sought for interest until such date after October 2, 2019. On a writ petition allowing the petition the court directed the Department to pay the applicable interest to the assessee for the period April 2018 to May 28, 2021.(AY. 2018-19)

Ingenico International India Pvt. Ltd. v. JCIT (2022) 444 ITR 236 (Delhi)(HC)

S. 244A : Refunds-Interest on refunds-Delay in payment due to rectification, omissions and defects in return-Time taken for such rectification to be excluded [S. 244, 244A(2)]

The golden rule of construction, is that a section must receive a meaning, as spelt out in the enactment. Under section 244A of the Income-tax Act, 1961, refund of any amount firstly becomes due to the assessee upon an order of assessment made by the Assessing Officer. In addition to a refund of excess tax received or collected, the assessee is also entitled to interest

on the excess refunded by order of assessment; however, the period of interest is governed by section 244A(2). Section 244A(2) provides that the period taken by the assessee to cure the defects in finalising the assessment is to be excluded for interest calculation. As it stood for the applicable AYs, sub-section (2) merely refers to reasons attributable to the assessee. Therefore, omission or commission in the return filed by the assessee resulting in a delay in assessment is attributable to the assessee; hence, the time taken to cure those omissions and defects is excluded for interest calculation. Dismissing the appeal the Court held that the assessee was not entitled to interest for the period taken by the assessee for curing the defects or omissions in the return or in the annexures filed along with the returns. In other words, the interregnum period, i. e., the period taken by the assessee for rectifying the defects or curing the omissions, did not entail the receipt of interest.

State Bank of India v. CCIT (2022) 444 ITR 599 / 212 DTR 433/ 326 CTR 150/ 286 Taxman 650 [FB](Ker)(HC)

S. 244A : Refunds-Interest on refunds-Deduction of tax at source-Excess deduction-Interest payable to deductor-Interest to be calculated from payment of tax [S. 195(2)]

Held that where the payment of tax made by a depositor is in excess and the Department chooses to refund the excess payment of tax to the depositor, interest requires to be paid on such refunds. The case does not fall either under clause (a) or clause (b) of section 244A of the Act. In the absence of an express provision as contained in clause (a), it cannot be said that the interest is payable from the first of April of the assessment year. Simultaneously, since the said payment is not made pursuant to a notice issued under section 156 of the Act, the Explanation to clause (b) has no application. In such cases, as the opening words of clause (b) specifically refer to "as in any other case", the interest is payable from the date of payment of tax. The deductor is entitled not only to refund of tax deposited under section 195(2) of the Act, but it has to be refunded with interest from the date of payment of such tax. Accordingly the interest had to be paid at the rate prescribed under section 244A(1)(b) for the period from the date of payment of tax, i. e., January 7, 2011.

Rohan Developers Pvt. Ltd. v. ITO (IT). (2022)442 ITR 404/ 211 DTR 164/ 325 CTR 395 (Bom) (HC)

S. 244A : Refunds-Interest on refunds-Excess advance tax paid-Entitle to interest.

Dismissing the appeal of the revenue Court held that section 244A was inserted by Direct Tax Laws (Amendment) Act, 1987 with effect from 1-4-1989 and was made applicable for assessment year 1989-90 onwards and thus, if interest on any excess advance tax paid in a financial year had to be computed after 1-4-1989, same had to be computed in accordance with section 244A only. Followed PCIT v. Carrier Air Conditioning & Refrigeration Ltd (2016) 387 ITR 441 (P& H)(HC)(AY. 2004-05)

PCIT v. Syndicate Bank (2021) 133 taxmann.com 215 (Karn) (HC)
Editor : Notice issued in SLP filed by the revenue;PCIT v. Canara Bank (2022) 284 Taxman 449 (SC)

S. 244A : Refunds – Interest on refunds -Entitled to interest up to actual date of actual payment of refund .
Held that the assessee is entitled to interest up to actual date of actual payment of refund . *(* AY. 2018-19)
Mangalam Arts v. Dy. CIT (2022) 98 ITR 63 (SN)(Jaipur) (Trib)

S. 244A : Refunds-Interest on refunds-Delay in payment of interest on account of technical reasons-Entitle to interest only interest on income tax refund due to assessee up to date of payment.
Dismissing the appeal of the assessee the Tribunal held that assessee is entitled to only interest on income tax refund due to assessee up to date of payment of such refund and there is no provision in Act to pay compensation to assessee for certain delay in payment of interest, if such delay is on account of technical reasons. (AY. 2008-09)
Elgi Ultra Industries Ltd. v. DCIT (2022) 194 ITD 698/ 215 TTJ 539/ 209 DTR 177 (Chennai) (Trib.)

S. 244A : Refunds-Interest on refunds-Refund already granted has to be first adjusted against interest component.

Dismissing the appeal of the Revenue the Tribunal held that, refund already granted has to be first adjusted against interest component. Followed Union Bank of India v.ACIT (2017) 162 ITD 142(Mum)(Trib), Grasim Industries Ltd v.CIT (2021) 23 taxmann.com 31 (Mum)(Trib) (TS. 480-ITAT-2022 (Mum) (AY. 2006-07 to 2008-09) Dt. 9-6-2022)

DCIT v. MSM Satellite (Singapore) Pte Ltd (2022) BCAJ-August-P. 66 (Mum)(Trib)

S. 244A : Refunds-Interest on refunds-Excess tax deduction at source--Entitled to interest on refund of excess deduction of tax at source under section 195 of the Act.

Held that on excess deduction of ta at source, the assessee is entitled to interest on refund.(AY. 2015-16, 2016-17)

Infosys BPO Ltd. v. DCIT *(*2022) 192 ITD 94 / 217 TTJ 478/214 DTR 89 (Bang) (Trib.)

S. 245 : Refunds-Set off of refunds against tax remaining payable-Appeal pending-Entitled to refund of amount adjusted in excess of 20 Per Cent-No order passed either accepting or rejecting--Entitled to refund of amount adjusted in excess of 20 Per Cent. [S. 156, 220(6)), 227, Art, 226]
Allowing the petition the court held that on the facts, the action of the Assessing Officer under section 245 making an adjustment of demand for the assessment year 2015-16 in excess of 20 per cent. against the refund relating to the assessment year 2008-09 without

taking any decision and disposing of the objection of the assessee in its application under section 220(6) against the intimation was bad in law and therefore, unsustainable. The Assessing Officer was directed to refund the amount adjusted in excess of 20 per cent. of the demand for the assessment year 2015-16 from the amount refundable for the assessment year 2008-09.(AY.2015-16) (SJ)

Graphite India Ltd. v. Dy CIT (2022)448 ITR 292 (Cal)(HC)

S. 245 : Refunds-Set off of refunds against tax remaining payable-Prior intimation to assessee mandatory [Art, 226]

Allowing the petition the Court held that it was clear that adjustments had been made by the Department for the assessment years 2014-15, 2015-16 without any intimation and that too within 30 days of the intimation for the assessment year 2016-17. There had been no intimation for adjustment of refund due for the assessment years 2005-06, 2006-07 and 2007-08 against outstanding demand of the year 2014-15. The Department was not empowered to adjust the refund amount automatically without complying the provisions of section 245 of the Act. Adjustment made against the refund due to the assessee for the relevant year therefore had to be set aside.(AY.2014-15, 2015-16, 2016-17)

Tata Cummins Pvt. Ltd. v. UOI (2022)447 ITR 455/ 219 DTR 506 / 329 CTR 598 (Jharkhand)(HC)

S. 245 : Refunds-Set off of refunds against tax remaining payable-Recovery of tax-Must be given information regarding proposed adjustment-Strictures-For not obeying and considering the judgments of the Supreme Court, as well as the provisions of sections 220(6) and 245 of the Act and the circulars of the Department Cost of Rs 50000 was imposed on the Assessing Officer to be deposited with the Rajasthan State Legal Services Authority. [S. 220(6), 222, 223, 246A, Customs Act, 1962 S. 129(e), 235(f), Art, 14, 19, 265]

The assessee has filed an appeal before the CIT(A) which was pending. The assessee also filed stay application in response to the intimation issued under section 245 of the Act. Inspite of pendency of stay application and objection for adjustment the Assessing Officer adjusted the refund due to the assessee. On writ allowing the petition the Court held that the action of recovery on the part of the respondents was dehors the statutory provisions specified under sections 220(6) and 245 of the Act and was without jurisdiction in terms of sections 222 and 223 of the Act. They had completely given a go-by to the principles of judicial discipline, majesty of law and their action was contrary to their own circulars. This high-handed action of the respondents was against articles 14, 19 and 265 of the Constitution of India. The recovery proceedings were not valid.The court issue strictures to the effect that appropriate Departmental action be initiated against the officers and authority involved in non-consideration of appeal of the assessee in time as well as for not obeying and considering the judgments of the Supreme Court, as well as the provisions of sections 220(6) and 245 of the Act and the circulars of the Department. The Chief Commissioner was directed to apprise about pendency situation and statistics to the Rajasthan State Legal Services Authority so that

in the interest of justice, it could be considered and appropriate correspondence could be made with the appropriate authorities in the larger public interest as illegal recoveries, levy of interest is imposed for the reasons beyond their control. The court imposed a cost upon the respondents of Rs. 50,000 which the Department shall pay itself or recover equally from respondent Nos. 1 and 2 and be deposited with the Rajasthan State Legal Services Authority and assessee in half and half within two months of passing of this order.(AY.2017-18)

Rajendra Kumar v. ACIT (2022)445 ITR 622/ 215 DTR 1/ 327 CTR 116 / 287 Taxman 625 (Raj)(HC)

S. 245 : Refunds-Set off of refunds against tax remaining payable-Adjustment made without prior intimation is held to be bad in law.[Art, 226]

The Assessing Officer adjusted the refund without giving any prior intimation. On writ allowing the petition the Court held that where a party raises objection in response to the intimation, the Assessing Officer exercising powers under section 245 of the Act must record reasons why the objection was not sustainable and also communicate it to the assessee and this would ensure that the power of adjustment under section 245 of the Act is not exercised arbitrarily. On facts of the case the Court held that action of the Assessing Officer making the adjustment without prior intimation is bad in law and illegal hence quashed.(AY. 2008-09) (WP.No. 1476 of 2022 dt. 18-7-2022)

Greatship (India) Ltd v. ACIT (2022) 289 Taxman 334 (Bom)(HC).

S. 245 : Refunds-Set off of refunds against tax remaining payable--Opportunity of hearing not provided before adjustment-Entitled to refund of adjustments in excess of 20 Per Cent.[S. 156, 220, 227, Art, 226]

On a writ petition seeking refund of the amount in excess of 20 per cent. of the total disputed tax demand for the assessment year 2013-14 adjusted against the refunds due for various assessment years.Allowing the petition, that in view of the mandate of law and the fact that refunds had been adjusted against outstanding tax demand by the authority without invoking section 245 and without following the due procedure prescribed under the section inasmuch as no notice or opportunity of predecisional hearing had been provided to the assessee prior to such adjustment of refund, the assessee was entitled to refund of adjustments made in excess of 20 per cent. of the disputed tax demands.(AY.2013-14)

Ramesth Constructions Pvt. Ltd. v. Dy. CIT (2022)442 ITR 181 / 209 DTR 462/ 324 CTR 337 (Delhi) (HC)

S. 245A : Settlement Commission-Cessation of Settlement Commission-Pendency of proceedings as on 31-1-2021-Constitutional validity of provision-Directions are issued to consider the applications by the Interim Board would be if the proceedings were pending as on January 31, 2021.[S. 245C, Art, 14, 19(1)(g), 20(2), 21,226]

Writ petitions were filed challenging the constitutional validity of the amendments to the 1961 Act in section 245A by inserting sub-clauses (da), (ea) and (eb), and sections 245B, 245BC, 245BD, proviso to sections 245C, 245D, 245DD, 245F, 245G, 245H and insertion of new sections 245AA and 245M by way of sections 54 to 65 of the Finance Act, 2021 with

retrospective effect from February 1, 2021, on the ground that such amendments were arbitrary, illegal and void and infringed fundamental rights conferred under articles 14, 19(1)(g), 20(2) and 21 of the Constitution. In view of the order dated September 28, 2021 passed by the Central Board of Direct Taxes the assessees had no objection if their writ petitions were disposed of with a direction to consider the applications which were submitted on or before September 30, 2021, but they sought a clarification that consideration of the applications would be made treating the pendency of the proceedings as on January 31, 2021. It was stated by the Department that if a notice under section 148 for reopening the assessment or a notice under section 143 of the 1961 Act was given on or after February 1, 2021, then a direction for consideration of the application might not be given, to which objections were raised by the assessees referring to Explanation (iv) to section 245A(b).The court observed that it had been agreed by the parties that the issue would be governed by Explanation (iv) to section 245A(b) and directed the respondents to send applications for consideration by the Interim Board, if submitted before September 30, 2021. The consideration of applications by the Interim Board would be if the proceedings were pending as on January 31, 2021.

Pitchai Rajagopal Shiva Kumaar v. UOI(2022)442 ITR 33/ 212 DTR 401/ 326 CTR 219 (Mad)(HC)

S. 245C : Settlement Commission-Settlement of cases-Full disclosure, co-operation with Commission-Disclosing Foreign Bank Accounts and extent of money available in them and filing affidavit narrating transfer of funds-Offer to be treated as true and full disclosure-Not to be treated as non-Co-operation-Mandatory personal hearing was not granted-Violation of principle of natural justice-Matter remanded to Settlement Commission [S. 245D, 245D(3), Income-Tax Settlement Commission (Procedure) Rules, 1997, R. 6, 8, 9, 9A, 15 Art, 226]

The application was rejected by the Settlement Commission. On writ allowing the petition the Court held that the applications had been rejected by an order under section 245D(4) on the ground that the assessees had failed truly and fully to disclose the particulars and that they had not co-operated with the Commission. True and full disclosure of the particulars and the manner of derivation of the additional income are the primordial requisites for an application to be entertained. The assessees had, referring to the applications, annexures and other particulars filed before the Commission, contended that they had truly and fully disclosed all the particulars within their knowledge and also the manner in which the additional income had been derived and that satisfied the requirements under sections 245C and 245D of the Act. Upon perusal of applications and the annexures, prima facie, the assessees had disclosed the fact that they had foreign bank accounts and the extent of money available in them. The assessees had also claimed that all available particulars were being furnished and also filed an affidavit as contemplated under rule 8 explaining that the funds in the Dubai bank account were transferred to another account which amount had been disclosed in annexure 4. All materials placed before the Commission were to be considered according to section 245D(5). If the primary and material facts are disclosed and explanations are offered later, that cannot be treated as a new disclosure. Even then, a conjoint reading of section 245D(5) and rules 8 and 15 makes it clear, all disclosures and documents submitted during the course of enquiry, which do not alter the nature or the original claim in the application have to be treated as true and full disclosure and hence the delay, if any, in filing any statement cannot be treated as non-co-operation. Similarly, when the assessees had claimed that the applications were filed

with the available documents and that certain documents were not available with them, unless it was proven with evidence that there had been additional income and that it had been deliberately suppressed, the conduct could not be termed as non-co-operation. It is only when the assessee fails to take any step on account of his deliberate intention to withhold the information, that such conduct can be termed non-co-operation. The casual finding that the assessee had filed returns without disclosing the income deposited in foreign banks and that it was the duty of the assessee to disclose the income was not sustainable. Even if the judge disagreed with the contentions, all the contentions ought to have been discussed and specific findings given, more particularly when allegations of violation of principles of natural justice and the procedures, had been made. Court also observed that there was no provision in the rules by which any time was fixed for the assessee to submit his objections to the report under section 245D(3). When no time is prescribed a reasonable time must be granted to the assessee. Under rule 9, the assessee is granted 15 days' time under rule 9A to submit his objections to a report, which is a reasonable period. The period of 3 days granted by the Commission was not a reasonable period, more particularly when the Commissioner had been allowed to file a report after the statutory period. Further, according to section 245D(4), it is mandatory to grant a personal hearing after receipt of the report under sub-section (3), which was not granted. Hence, the procedure contemplated under the Act had been violated. The date for personal hearing was to be fixed after the objections were filed by the assessee. Therefore, the order had been passed in violation of the principles of natural justice and against the procedure prescribed under the Act. The order was set aside and the matter remanded for fresh consideration after giving both parties opportunity.(AY. 2005-06 to 2012-13)

Kandathil M. Mammen v. ITSC(2022)446 ITR 595/ 218 DTR 65 / 329 CTR 839 / 289 Taxman 347 (Mad)(HC)

Arun Mammen v. ITSC(2022)446 ITR 595/ 218 DTR 65/329 CTR 839 / 289 Taxman 347 (Mad)(HC)

Editorial : Decision of the single judge in Arun Mamen v. ITSC (2021) 438 ITR 378 (Mad)(HC) reversed.

S. 245D : Settlement Commission-Settlement of cases-Order Passed by Settlement Commission bereft of reasons-Unsustainable-Order set aside and matter remanded to interim Board for passing speaking order. [S.245AA, 245D(4) Art, 226]

On writ petitions against orders of the Settlement Commission passed under section 245D(4) of the Income-tax Act, 1961, the High Court held that the manner in which the orders had been passed by the Settlement Commission clearly showed complete lack of sensibility on its part, that the mere fact that the orders had been given effect would make no difference as they were patently illegal and that since they had forced an otherwise avoidable litigation, the Department was entitled to exemplary costs. On appeal the Court held that the order passed by the Settlement Commission being bereft of reasons was unsustainable, and the fact that the assessee had made payment in terms of the order passed by the Settlement Commission could not be a ground to sustain the order passed by the Settlement Commission, being contrary to the mandate of section 245D(4) of the Income-tax Act, 1961. Order of High Court affirmed,

Decision of the Allahabad High Court (printed below) affirmed on this point. however, the matter had to be remitted for fresh decision. Since the Settlement Commission had been wound up, the matter was to be remitted to the Interim Board constituted under section 245AA of the Act, to pass a reasoned order.

Nand Lal Srivastava v. CIT (2022)447 ITR 769 / 144 tamann.com 12 / 220 DTR 42/ 329 CTR 596 / 289 Taxman 618 (SC)

N. L. Srivastava (AOP) v. CIT (2022)447 ITR 769 / 144 tamann.com 12 (SC)

Rajesh Kumar Srivastava v. CIT (2022)447 ITR 769 / 144 tamann.com 12 (SC)

S. 245D : Settlement Commission-Settlement of cases-Procedure –Procedure laid down must be followed-Order not following procedure-Not valid-Writ petition pending when Settlement Commission was abolished-Petition to be considered by Interim Board.Principles of natural justice-legal maxim "nemo judex in sua causa debet esse", No one can be a judge in his own case. [S. 245D(5), 245A, 245B,Art, 226]

On a writ appeal against the order of the singe judge upholding an order passed by the Settlement Commission the Court held that the powers of the High Court to interfere with orders of the Settlement Commission are available, when the Commission has violated the procedures prescribed under the Act which includes the grant of opportunity and the obligation to consider the materials before the Commission. Similarly, when there is no nexus between the findings and the decision by the Tribunal, the order can be interfered with. These grounds are in addition to the grounds of violation of the principles of natural justice, jurisdictional errors, against the provision, bias, fraud and malice. It is also settled law that a writ of certiorari can be issued by the High Court under article 226 of the Constitution of India, when an administrative or a quasi-judicial authority, in the decision-making process, considers irrelevant materials by ignoring the relevant materials to draw its conclusion, the order can be interfered with. The power of the High Court which emanates from the Constitution cannot be curtailed by law made by the Legislature, such law being subordinate to the Constitution.On the facts the proceedings before the Settlement Commission were conducted at Chennai and the assessee was not provided an opportunity to put forth its case. Therefore, the authorities had conducted the proceedings against the assessee in violation of the principles of natural justice. The Vice Chairman of the Settlement Commission was the Director General, when all the actions subsequent to the search, took place against the assessee. In such circumstances, the legal maxim "nemo judex in sua causa debet esse", came into operation. Therefore, it was completely unnecessary and beyond the scope of the Commission to find fault with the modus operandi of the assessee in arranging its tax liability, while deciding an application under section 245D. That pending the assessment proceedings relating to the assessment years from 2007-08 to 2014-15, the assessee filed the settlement application, which was rejected by the Settlement Commission on September 30, 2016, the challenge thereto was accepted by this court. The writ petition was pending when the Settlement Commission was abolished and the Interim Board was brought into operation. Various High Courts had earlier issued directions to entertain the applications for settlement and such applications were also entertained. Hence the contention of the Department that the Interim Board could not entertain the old application, could not be accepted. Upon the matter being remanded, the application filed by the assessee would have to be treated as a pending application and appropriate orders were to be passed after giving the assessee sufficient opportunity and by considering all the materials placed by them.(AY.2007-08 to 2014-15)

Lion Dates Impex (P.) Ltd. v. Chairman, Income-Tax Settlement Commission (No. 2) (2022)448 ITR 436 / 220 DTR 321 (Mad)(HC)

Editorial : Decision of single judge in Lion Dates Impex (P.) Ltd. v Chairman, Income-Tax Settlement Commission And Others (No. 1) (2022)448 ITR 422 / 220 DTR 369 (Mad)(HC)), set aside.

S. 245D : Settlement Commission-Powers-Rectification of order-Interest under section 234B cannot be levied by passing rectification order-Advance tax-Waiver of interest-Entitled to reduce tax deductible or collectible at source while computing its advance tax-Interest on account of shortfall in payment of advance tax not leviable on such income-Assessments prior to Financial year 2012-13-Subsequent notification of Board will not affect consideration of applications pending on merits-Law prevailing on date of application applies.[S. 234A, 234B,234C, 245C, 245D(4),245F(1), General Clauses Act, 1897, S.6,Art,226]

Dismissing the writ petitions of the Revenue the Court held that,interest under section 234B cannot be levied by passing rectification order. Assessments prior to Financial year 2012-13, subsequent notification of Board will not affect consideration of applications pending on merits. Law prevailing on date of application applies.(AY.1996-97 to 2005-06)

CCIT v. Van Oord Acz Marine Contractors BV. (2022)447 ITR 250/ 220 DTR 153 / 329 CTR 691/141 taxmann.com30 (Mad)(HC)

CIT v. John Baptist Lasrado (2022)447 ITR 250/ 220 DTR 153 / 329 CTR 691 (Mad)(HC)

S. 245D : Settlement Commission-Settlement of cases-Advance tax-Interest-Income earned from abroad-Levy of interest is held to be not valid.[S.192, 201(IA), 234A, 234B, 245D(4), Art, 226]

The Settlement Commission rejected the assessee's miscellaneous application petition against the levy of interest. Allowing the petition the Court held that the employer abroad had paid the interest under section 201(1A) and tax having already been remitted it could not be recovered from the assessee once again. The assessee was not liable for payment of interest under section 234B in respect of the salary income earned by him outside India. In respect of any other income the Assessing Officer could proceed to levy interest in accordance with law. The order charging interest was set aside.(AY.1996-97 to 2005-06) (SJ)

John Baptist Lasrado v. ITSC (2022)447 ITR 231 (Mad) (HC)

S. 245D : Settlement Commission-Settlement of cases-Procedure-Application-Court in writ jurisdiction cannot scrutinize or reappreciate facts, evidence or findings of Settlement Commission in reaching to its conclusion for allowing claim in settlement application.[S. 245D(1), Art, 226]

The assessee-company, filed a settlement application relating to assessment year 2012-13 before the Settlement Commission for settlement of its income tax matters by disclosing certain income. The application was proceeded with under section 245 D(1) of the Act. The Settlement Commission called for a report under rule 9 of the Income-tax Settlement Commission (Procedure) Rules, 1997 from the Principal Commissioner. In the said report, the Commissioner/petitioner objected to the settlement of the case of assessee alleging that the assessee had not made true and correct disclosure of its undisclosed income before the Settlement Commission. The petitioner also alleged that the assessee was compelled to disclose its undisclosed income arising out of unrecorded business transactions only when the existence of the same was brought to light by the survey operation and alleged that had the survey not been conducted and the documents not seized, the assessee would not have disclosed any unaccounted income voluntarily. The Settlement Commission allowed the application of assessee, holding that once the documents had been impounded in the course of survey, contents of the documents would be presumed to be true as per provisions of section 292C and once the applicant had disclosed the profit/income as per notings on those documents, any further probe or query in the matter would serve no purpose. The Revenue filed writ petition. Dismissing the petition the Court held that the petitioner could not make out any exceptional case in this writ petition for exercising constitutional writ jurisdiction of this Court under article 226 for scrutinizing or reappreciating the facts, evidence or findings of the Settlement Commission in reaching to its conclusion of allowing the claim of the assessee made in settlement application and further the Court in exercise of its constitutional jurisdiction under article 226 cannot substitute the findings of the Settlement Commission with its own findings and come to a different conclusion. The Court also observed that the petitioner could not demonstrate before the Court any legal infirmity in decision making process in course of impugned income tax settlement proceeding. Writ petition was dismissed. (W.P.O. 289 of 2017 dt. 14-9-2021)(SJ)

PCIT v. Settlement Commission (2022) 286 Taxman 129 (Cal)(HC)

S. 245D : Settlement Commission-Settlement Commission Accepting declaration without examining material on record-High Court justified in setting aside order of Settlement Commission-Order of single judge affirmed.[S. 245C, 245D(6), Art, 226]

The assessee filed application for settlement under section 245C for the block period April 1, 1990 to April 25, 2000. The applications were admitted and the response of the Commissioner was sought for. The Settlement Commission accepted the application and determined the terms for settlement of issues concerning tax payable by the assessee The Commissioner challenged the order. The single judge set aside the order and remitted the matter to Settlement Commission for consideration and disposal afresh. On further appeal

dismissing the appeal the Court held that the procedure followed by the Settlement Commission in the case on hand in appreciating the advances, cash flow statement, etc., definitely desired consideration in accordance with the provisions of the Act. The single judge had objectively and within the scope of review available under article 226 against the orders made by the Settlement Commission, rightly interdicted and remitted the matter to the Settlement Commission.(AY. 1-4-1990 to 25-4-2000)

Ayurvedic Beach Resort Pvt. Ltd.. v CIT (2022)443 ITR 321 (Ker) (HC)
Editorial: Decision of single Judge in CIT v. Settlement Commission (2017) 391 ITR 374 (Ker)(HC) affirmed.

S. 245D : Settlement Commission-Violation of principle of natural justice-No opportunity is given to raise objections to order-Order of Settlement Commission is set a side [S. 245C, 245D(3), 245D(4), Art, 226]

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Allowing the petition the Court held that the report dated December 27, 2013 had been filed only on January 15, 2014, the date on which the application was heard by the Commissioner and orders were reserved. The procedural violation went to the root of the matter rendering the order of the Commission wholly unsustainable, in violation of the provisions of the Act and causing grave prejudice to the assessee. The consequence would be that the order had to be treated as an order in violation of principles of natural justice and to a certain extent beyond jurisdiction. Those were all grounds very much available to a court exercising jurisdiction under article 226 to interfere with the order. The order of the Settlement Commission rejecting the application of the assessee was not valid.Referred Jyotendrasinhji v. S. I. TripathI (1993) 201 ITR 611 (SC)

Swamina International Pvt. Ltd. v. ITSC (2022)442 ITR 343/ 286 Taxman 26 / 214 DTR 175/ 327 CTR 684 (Cal) (HC)

S. 245D : Settlement Commission-Limitation-Delay in passing order not due to assessee-Delay could be condoned.[S. 245D(4), 245HA(1)(iv)]

During the pendency of scrutiny assessment proceedings, the assessee preferred an application before the Settlement Commission offering additional income. The Settlement Commission passed an order dated May 27, 2016 under section 245D(4) of the Act, and determined the total income and computed the tax liability. The assessee filed an application for rectification of the order before the Settlement Commission which came to be rejected. The assessee challenged the orders of the Settlement Commission which was allowed by the Single judge. On appeal division Bench dismissing, the appeal that the judgment in the case of Star Television News Ltd v. UOI (2009) 317 ITR 66(Bom)(HC),UOI v. Star Television News Ltd (2015) 373 ITR 528 (SC) was not applicable to the applications filed subsequent to June 1, 2007. The single judge had meticulously arrived at a decision on marshalling the facts of the case vis-a-vis the ruling of Star Television News L td. with the relevant provisions applicable to the facts of the present case. The order was justified.(AY.2006-07 to 2012-13)

CIT v. RNS Infrastructure Ltd. (2022)442 ITR 417/ 286 Taxman 509 (Karn) (HC)

S. 245S : Advance rulings – Binding - Non-Resident — Royalty — Assessing Officer Holding Payments For Software Licence Services Taxable As Royalty Following Ruling Of Authority For Advance Rulings —Justified .

The Tribunal held that the Assessing Officer had only followed the ruling of the Authority for Advance Rulings in the assessee's own case and under the provisions of section 245S of the Act, the ruling of the Authority for Advance Rulings is binding upon the Revenue authorities. It was also not the case that the High Court had reversed the order of the Authority for Advance Rulings. There was no infirmity in the order of the Commissioner (Appeals).(AY. 2010-11, 2011-12)

EY Global Services Ltd. v. ACIT (IT) (2022)96 ITR 58 (SN) (Delhi) (Trib)

S. 246A : Appeal-Commissioner (Appeals)-Appealable orders-Pre-deposit-For entertaining an appeal it is not mandatory for pre deposit of tax in dispute [S. 144, 144B,220(6), 246A, Art, 226]

The petitioner filed writ against the order passed u/s 144 of the Act. High Court held that for filing an appeal before CIT(A) it is not mandatory to pre-deposit of 20% of tax in dispute. The Court also held that it is open to Assessing Authority to make a demand and the petitioner need not construe that such insisting of demand is a pre-deposit required for entertaining appeal under section 246A of the Act. The writ was dismissed.

K 553 V.Thutharipalayam Primary Agricultural Co-operative Credit Society Ltd.v.CIT (2022) 286 Taxman 677 (Mad)(HC)

S. 246A : Appeal-Commissioner (Appeals)-Appealable orders-Apprehension of proper opportunity of hearing-Directions to expedite the disposal of appeal-Directed to appear before Commissioner (Appeals) on date fixed and request for time if required [S. 250, 251, Art, 226]

Writ petition was filed praying for expedite hearing of appeal. The Court directed the assessee to appear before Commissioner (Appeals) on date fixed and request for time if required. No further specific directions were needed to be issued. (AY. 2010-11)

Madhu Korah (2022) 443 ITR 345 (Jharkhand)(HC)

S. 246A : Appeal-Commissioner (Appeals)-Writ against assessment order-Alternative remedy-Writ petition was dismissed.[S. 143(3), 248, Art, 226]

Where the assessee challenged an assessment order by way of a writ petition, the assessee was to be relegated to the alternate remedy of appeal since the exceptions to the alternate remedy, i.e., (i) a breach of fundamental rights; (ii) a violation of the principles of natural

justice; (iii) an excess of jurisdiction; or (iv) a challenge to the vires of the statute or delegated legislation were not present. Writ petition was dismissed.(AY. 2014-15)
Sree Karumariamman Granites v. ACIT (2022) 440 ITR 537/ 209 DTR 283/ 324 CTR 418 (Mad) (HC)

S. 246A : Appeal - Commissioner (Appeals) - Appealable orders -Denial of appeals – Protective assessment – Additional grounds – Appeal maintainable – Order of the Assessing Officer converting the protective addition into substantive addition was deleted . [S. 132(1) 153A , 245D(4) 254(1)]
Dismissing the appeal of the Revenue the Tribunal held that the CIT(A) was justified in setting aside the order of the Assessing Officer for want of jurisdiction and requisite sanction under the law . When the assessee was not an applicant before the Settlement Commission and there was no direction by Settlement Commission in respect of assesseee to convert protective addition into substantive addition . Order of the Assessing Officer convert the protective addition into substantive addition was not in accordance with the law . Order of CIT(A) was affirmed . (AY. 2013 -14)
Dy.CIT v. Pallavi Mishra (Smt) (2022) 99 ITR 214 (Jaipur)(Trib)

S. 246A : Appeal-Commissioner (Appeals)-Appealable orders-Penalty under section 270A-Appealable before CIT(A) and Not before Appellate Tribunal.[S.246A(1)(q), 253 (1)(a),275]
Held that order imposing penalty under section 270A was passed by Assessing Officer, same would be appealable before Commissioner (Appeals) and not before Tribunal. (AY. 2017-18)
Desmond Savio Theodore Fernandes. v. ITO (2022) 195 ITD 352 / 217 TTJ 84 (UO) (Mum) (Trib.)

S. 249 : Appeal-Commissioner (Appeals)-Form of appeal and limitation-Supreme Court extending period prescribed under any general or special Law in respect of all judicial or quasi-judicial proceedings due to pandemic-Subsequent Circular Dated 25-5-2021 issued by Board extending limitation for filing appeal before Commissioner (Appeals) until further order [S. 119, Art, 226]
On a writ petition contending that though the Supreme Court had passed an order dated April 27, 2021 in Cognizance for Extension of Limitation, In Re [2021] 226 Comp Cas 127 (SC) extending the limitation as prescribed under any general or special law in respect of all judicial or quasi-judicial proceedings whether condonable or not till further orders, the Central Board of Direct Taxes had issued a circular dated April 30, 2021 [2021] 433 ITR (St.) 405) by which the limitation for filing the appeal before the Commissioner was extended only up to May 31, 2021. The court disposed of the petition taking note of the fact that subsequently the Central Board of Direct Taxes had issued Circular No. 10 of 2021 dated May 25, 2021 [2021] 439 ITR (St.) 1) following the order of the Supreme Court extending the limitation for filing the appeal before the Commissioner until further order.
Palak Agarwal v. CBDT (2022)443 ITR 189 (MP) (HC)

S. 249 : Appeal - Commissioner (Appeals) - Form of appeal and limitation – Dismissal of appeal in limine- Matter restored to consider maintainability of appeal [S. 139(1) 153A, 246A, 249(4), 250]
Held, that the Commissioner (Appeals) had failed to exercise the judicial discretion that was vested with him for exempting the assessee from the operation of the provisions of clause (b), despite there being a categorical claim of the assessee that the failure on its part to deposit the

tax was occasioned on account of financial difficulties. The assessee's case was covered by clause (b) of section 249(4) of the Act, which did vest a discretion with the Commissioner (Appeals) to exempt the assessee for good and sufficient reasons to be recorded in writing from the pre-condition of payment of tax and admit the appeal, but the Commissioner (Appeals) had without exercising his discretion in the backdrop of the reason given by the assessee dismissed its appeal in limine. The issue was set aside and restored to the file of the Commissioner (Appeals) with a direction to reconsider the maintainability of the appeal on the basis of reasons given by the assessee as regards the failure on its part to pay the amount of tax as contemplated in clause (b) of section 249(4) of the Act.(AY.2012-13, 2013-14)
Topworth Urja and Metal Ltd. v. ACIT (2022) 99 ITR 233/ 219 TTJ 625/ 217 DTR 41 (Raipur)(Trib)

S. 250 : Appeal - Commissioner (Appeals) – Procedure – Additional grounds admitted violation of Rule 46A(3) – Without providing an opportunity to the Assessing Officer-Matter remanded [R. 46A(3)]
Held that the Commissioner (Appeals)has admitted the additional grounds in violation of Rule 46A(3) . ie. without providing an opportunity to the Assessing Officer. Matter was remanded to the file of the CIT(A) for adjudication . (AY. 2007 -08)
ACIT v. Fiat India Pvt Ltd (Now known as New Holland Fiat India Pvt Ltd)(2022) 217 TTJ 74 (Mum)(Trib)

S. 250 : Appeal - Commissioner (Appeals) – Powers - Conduct the enquiry to dispose of the appeal as he deemed fit [S. 250(4)]
Held that the Commissioner (Appeals) invoking the powers conferred upon him under section 250(4) of the Income-tax Act, 1961 called for certain information and documents and based his findings on such information and documents. In the light of section 254(4) of the Act the Commissioner (Appeals) was free to conduct the enquiry to dispose of the appeal as he deemed fit. There was no call to interfere with the findings of the Commissioner (Appeals).(AY.2015-16)
Dy. CIT v. Converteam Group (2022) 99 ITR 34 (SN)(Delhi) (Trib)

S. 250: Appeal - Commissioner (Appeals) – Ad- Hoc disallowance — Security expenses — Addition was deleted .
It was held that the Commissioner (Appeals) had failed to follow the procedure in appeal as enunciated under section 250 of the Act. Therefore, following the decision of the Tribunal in the assessee's own case, the addition made on ad hoc disallowance in respect of "security expenses" claimed for the year was to be deleted. (AY. 2009-10)
Kolkata West International City Pvt. Ltd. v. Dy. CIT (2022) 96 ITR 48 (SN) (Kol) (Trib)

S. 250 : Appeal-Commissioner (Appeals)-Procedure-Ex-parte order-Even while passing the ex-parte order the CIT(A) has to deal with merits in respect of all issues raised in the grounds of appeal.[S. 144, 251]

Held that the scheme of section 250 does not visualise any situation in which an appeal can be summarily dismissed disregarding material on record; whether an assessee appears before Commissioner (Appeals) or not, it is statutory obligation of Commissioner (Appeals) to dispose of an appeal on merits. Matter remanded to CIT(A) decide on merits.(AY.2012-13)
Marvel Industries Ltd. v. DCIT (2022) 196 ITD 229/ 218 TTJ 806 / 216 DTR 249 (Mum) (Trib.)

S. 250 : Appeal-Commissioner (Appeals)-Procedure-Ex-parte order-Adjournment request was filed-Matter was to be remanded to Commissioner (Appeals) for adjudication de novo. [S. 251]

Held that since assessee had bona fide reasons for non-appearance and assured full co-operation with Commissioner (Appeals) for expeditious disposal of appeal, matter was remanded to Commissioner (Appeals) for adjudication de novo after affording another opportunity of hearing. (AY. 2005-06)

Goldstone Trading Company (P.) Ltd. v. ACIT (2022) 196 ITD 556 (Mum) (Trib.)

S. 250 : Appeal-Commissioner (Appeals)-Procedure-Ex-parte order-Matter was remanded to Commissioner (Appeals) for fresh adjudication.[S. 144, 153C, 251]

Assessee-company was issued notices by Commissioner (Appeals)-However, assessee failed to respond to said notices. Consequently, Commissioner (Appeals) passed ex parte orders. Held that business of assessee-company was on verge of closure and an additional director was appointed for smooth functioning of company, as managing director of company resigned.Since assessee-company was traversing through a difficult patch of time, matter was remanded to Commissioner (Appeals) for fresh adjudication on merits after giving one more opportunity of hearing to assessee. (AY. 2008-09, 2010-11 to 2013-14)

Samira Habitats India Ltd. v. DCIT (2022) 196 ITD 561 (Mum) (Trib.)

S. 250 : Appeal-Commissioner (Appeals)-Procedure-Ex parte order-Matter remanded to the Assessing Officer to do deno assessment.[S. 143 (3)]

Held that where criminal proceedings were initiated against assessee and its directors in relevant assessment year which culminated into prison time for key person of assessee-company, in such case non-appearance before revenue could not be put against assessee to pass ex parte assessment order. Matter was to be remitted to Assessing Officer for de novo assessment. (AY. 2013-14)

Shree Naurang Godavari Entertainment Ltd. v. ACIT (2022) 194 ITD 431 / 216 TTJ 853/ 212 DTR 129 (Mum) (Trib.)

S. 250 : Appeal-Commissioner (Appeals)-Procedure-Faceless Appeal Scheme-Video Conference-Natural justice-Opportunity for personal hearing not granted-Retrospective effect-Order set aside and remanded back. [S. 250(6B),National Faceless Appeals Scheme 2020, Rule 12(2), 12(3), 13(2)]

Where the assessee specifically requested for an opportunity of hearing through the video conferencing, and the NFAC declined the same and simply proceeded to dispose of the appeal on the basis of material on record. Department contended that under the Faceless Appeals Scheme 2020, the granting of opportunity through video conferencing was not

mandatory, and it was at the sole discretion of the authority concerned to grant or not to grant the video conferencing hearing. Departmental Representative vehemently supports the stand of the NFAC., Honourable Tribunal also observed that in view of the subsequent development by way of a notification of the Faceless Appeals Scheme 2021, which has come into effect from 28th December 2021 in supersession of the Faceless Appeals Scheme 2020, even a specific call on the request for video conferencing hearing may is not really necessary. Honourable Tribunal held it was fit and proper to remit the matter to the first appellate authority after giving an opportunity for a personal hearing, in terms of rule 12 of the Faceless Appeals Rules, 2021, for adjudication de novo in accordance with the law and by way of a speaking order.Referred,Ramco Cements Ltd v. NFAC[(2022) 442 ITR 279 (Mad) (HC), CIT v. Vatika Townships Pvt Ltd. (2014) 367 ITR 466 (SC), Government of India v. Indian Tobacco Association (2005) 7 SCC 396, Vijay v. State of Maharashtra (2006) 6 SCC 286.(ITA 112/Mum/2022 dated June 30, 2022) Bench 'B' (AY. 2010-11)

Bank of India v. ACIT (Mum) (Trib) www.itatonline.org

S. 250 : Appeal-Commissioner (Appeals)-Procedure-Failure to attend on specified date-Failure to consider additional evidence-Order was set aside and directed to pass speaking order [S. 251]

Commissioner while passing order rejected additional evidences submitted by assessee on ground that despite issuance of various notices assessee did not appear for hearing and only filed written submissions alongwith fresh evidences.On appeal the Tribunal held that admission of fresh evidence itself would be a grievance in a circuitous manner by assessee seeking an opportunity of being heard to clarify facts. Accordingly the order was to be set aside with the direction to pass speaking order.(AY. 2013-14, 2014-15)
Rajesh Kumar Singhal. v. ITO (2022) 192 ITD 133 (Delhi) (Trib.)

S. 250 : Appeal-Commissioner (Appeals)-Procedure-Principle of natural justice-Dismissal of appeal without granting right to be heard-Matter remanded [S. 154]
Assessee filed rectification application under section 154 with certain written submissions. Commissioner (Appeals) dismissed said application without hearing assessee. On appeal the Tribunal held that since there was nothing on record to show that right to be heard was consciously and knowingly waived off by assessee and written submission were to be considered as substitution, impugned order passed without granting right to be heard was to be remanded and Commissioner (Appeals) ought to pass order after giving assessee a reasonable opportunity of being heard-Matter remanded. (AY. 2015-16)
Parminder Singh Grewal. v. ITO (2022) 192 ITD 592 (SMC) (Chd) (Trib)

S. 251 : Appeal-Commissioner (Appeals)-Stay of demand-Writ petition dismissed by High Court-Parties agreeing to allow matters before Commissioner (Appeals)-Matter disposed with direction for maintenance of Status Quo.[Art, 226]
Writ petition was not entertained on the ground that the assessee had not approached the court with clean hands, the High Court refused to exercise its discretionary writ jurisdiction in favour of the assessee. On appeal the Court observed that certain matters concerning the assessee pending consideration before the Commissioner (Appeals) pertained to the AY.

2010-11 as well as subsequent AY.s, and that both sides were agreeable that the matters pending before the Commissioner (Appeals) be taken to their logical conclusion, the court left the assessee and the Department to agitate all the issues before the Commissioner (Appeals) in the pending appeals without being influenced by any of the observations made by the High Court. The court also directed maintenance of status quo by the parties pending such disposal.(AY.2011-12)

Indus Towers Ltd. v /ACIT. (2022)443 ITR 38/ 213 DTR 409/ 326 CTR 574/ 286 Taxman 226 (SC)

S. 251 : Appeal - Commissioner (Appeals) – Powers Delay in filing – Dismissal of appeal – Delay condoned – Directed to adjudicate on merits . [S.200A(1), 234E, 250]
Held that rules of procedure are handmaid of justice. Further, when substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserves to be preferred. Thus, the appeals were to be restored before the Commissioner (Appeals) for adjudication on the merits after condoning the delay in filing the appeals.*(* AY.2014–15 to 2016–17)
Sanjay Gopal Pandit v. NFAC (2022)95 ITR 81 (SN)(Mum) (Trib)

S. 251 : Appeal - Commissioner (Appeals) – Powers – Delay - Neither intentional nor deliberate – Delay was condoned – Directed the CIT(A) to decide the appeal on merits. [S. 250, 254(1)]
The CIT(A) dismissed the appeal only on ground of delay of 54 months in filing appeal without deciding the issues on merits. On assessees appeal, to Tribunal the Tribunal held that since assessee's father was suffering from multiple ailments during period of delay and remained hospitalized, the delay was neither intentional nor deliberate and there being sufficient reasons, directed CIT(A) to condone delay and decide appeal on merits Thus, the Tribunal set aside the order passed by CIT(A) in order to substantiate the cause of justice and so decide the issue once for in order to stop multiplicity of the proceedings. (AY. 2009-10)
Rakesh Metal & Tubes v. ITO (2022) 144 taxmann.com 68 / (2023) 198 ITD 1 (Mum)(Trib.)

S. 251 : Appeal - Commissioner (Appeals) – Powers – Capital gains- Cannot be assessed as sale consideration – New source of income - Jurisdiction of CIT(A) does not extend to introducing altogether new source of income [S. 250]
The Tribunal by relying on CIT v. Shapoorji Pallonji Mistry (1962) 44 ITR 891(SC), CIT v. Union Tyers (1999) 240 ITR 556 (Delhi) (HC) , CIT v. Sardari Lal & Co. (2001) 251 ITR 864 (Delhi))(HC), held that the jurisdiction of CIT(A) does not extend to introducing an altogether new source of income. Where AO treated entire sale consideration on sale of land as long term capital gains the CIT(A) could not have treated part of sale consideration as business profits. (AY. 2012-13)
Rangnathappa Govindappa Zharkhande v. ITO (2022) 144 taxmann.com 152 / (2023) 198 ITD 290 (Pune)(Trib.)

S. 251 : Appeal-Commissioner (Appeals)-Powers-New issue which was not considered by AO during the course of assessment-Enhancement is not valid.[S.94(7) 251(1)(a)]

On Appeal the Tribunal held that the of dividend stripping u/s 94(7) was never considered by AO in course of assessment, CIT(A) had no jurisdiction to enhance the income qua the said issue. (AY.2004-05 & 2005-2006)

Frick India Ltd.v. DCIT (2022) 216 TTJ 146 (Delhi)(Trib.)

S. 251 : Appeal-Commissioner (Appeals)-Powers-CIT(A) does not have power to dismiss an appeal for non-prosecution-Order set aside and restored the matter to decide on merits.[S. 251(2)]

CIT(A) dismissed the appeal for non-prosecution. On appeal the Tribunal held that CIT(A) does not have power to dismiss an appeal for non-prosecution. Order was set aside and restored the matter to decide on merits. Followed CIT v. Prem Kumar Arjundas Luthra (HUF) (2017) 297 CTR 614 (Bom)(HC) (ITA No. 349/Pan/ 2017)

The Raibag Taluka Primary Co-Operative Agriculture & Rural Development Bank Ltd (2022) The Chamber's Journal-April-P. 102 (Panji)(Trib)

S. 251 : Appeal-Commissioner (Appeals)-Powers-Assessee could not level baseless allegations against CIT(A) –Matter remanded.[S.250]

Held that Commissioner (Appeals) repeatedly granted adjournments on all applications moved by assessee but assessee remained unrepresented and thereafter, on basis of material available on record order was passed. Assessee could not level baseless allegations against CIT(A). Order was set aside solely on grounds that taxpayer should not suffer on account of either his ignorances or inability due to some extenuating circumstances on account of which he could not come clean with all his facts and explanations qua issues before revenue. (AY. 2012-13)

Abdul Wahab. v. ITO (2022) 193 ITD 746 (SMC) (Delhi) (Trib.)

S. 252 : Appellate Tribunal-Members-Qualification-Appointment of Members Contempt-Not appointing the members of the Tribunal-Recommendations of the Search cum selection commission-Before recommendations are formulated and in exceptional cases where certain material comes to light after submission of recommendations, that must also be drawn to attention of SCSC so as to enable it to consider whether any modification of its recommendations is necessary. [Tribunals Reforms Act, 2021, S. 3,

The petitioner had filed contempt petition on the ground that the ACC placed reliance on certain reports and feedback obtained subsequent to the recommendations of the Search cum selection commission (SCSC) none of which have been placed before SCSC and further, 19 persons were yet to be appointed and 19 new vacancies have since arisen as a result 38 vacancies remained unfiled in the Tribunal. Court held that when Search cum selection commission (SCSC) recommended 41 persons for appointment as members of Tribunal and Appointments Committee of Cabinet (ACC) after considering said recommendations selected only 22 persons by placing reliance on certain reports and feedback which were not placed before SCSC, since all inputs bearing on candidature of each prospective applicant for post of Tribunal member under consideration, ought to be placed on record of SCSC, before recommendations are formulated and in exceptional cases where certain material comes to light after submission of recommendations, that must also be drawn to attention of SCSC so

as to enable it to consider whether any modification of its recommendations is necessary. The proceedings listed before the Court on 1 July 2022.(CP (C)No.708 of 2021, WP No. 502 of 2021 dt 17-5-2022)
Advocate Association Bengaluru v. Anoop Kumar Mendiratta (2022) 288 Taxman 8 (SC).

S. 253 : Appellate Tribunal -Ex -parte order – Condonation of delay – In action on the part of the Authorised Representative - Delay of 627 days was condoned. [S. 253(5)]
Held that theAssessee has not received the ex parte order passed by the CIT(A) owing to the inaction on the part of her Authorised Representative and learnt about the passing of the CIT(A)'s order only when she was informed to comply with the penalty notices, there exists sufficient and reasonable cause for the delay in filling the present appeal before the Tribunal and, therefore, the delay in filing the appeal is condoned. Matter was remitted back to the CIT(A) to decide the appeal afresh after giving an opportunity of being heard to the assessee.(AY.2014-15)
Sandhya Mallick v. ITO (2022) 220 TTJ 403 / 218 DTR 195 (Cuttack)(Trib)

S. 253 : Appellate Tribunal - Corporate debtor- Moratorium period - Appeal of the Revenue – Cross appeals - Institution of suit against corporate debtor - Permission obtained from National Company Law Tribunal was furnished - Appeal of Revenue was dismissed - which was prohibited under Section 14 of Insolvency and Bankruptcy Code, 2016, it deserved to be dismissed and appeal filed by assessee also deserved to be dismissed, as it did not furnish any permission obtained from National Company Law Tribunal [Insolvency and Bankruptcy Code, 2016 , S, 14, 238]

Both assessee (Corporate debtor) and revenue filed cross appeals challenging order passed by Commissioner (Appeals) .The appeal filed by revenue was an institution of suit against corporate debtor which was prohibited under section 14 of Insolvency and Bankruptcy Code, 2016 . Appeal filed by revenue was dismissed with liberty to Assessing Officer to file appeal afresh after completion of moratorium period upon revival of corporate debtor as per resolution plan as approved by Adjudicating Authority or upon appointment of liquidator, as case may be . Appeal filed by assessee also dismissed, as it did not furnish any permission obtained from National Company Law Tribunal (NCLT) and no letter of authority issued by Interim Resolution Professional in favour of authorised signatory of assessee had been filed before Tribunal .Assessee was granted liberty to file appeal afresh with prior permission of NCLT or after completion of moratorium period . (AY. 2012 -13)
Dy. CIT v. Global Softech Ltd. (2022) 212 DTR 133 / 217 TTJ 1 / 140 taxmann.com 103 (Mum)(Trib)

S. 253 : Appellate Tribunal - Delay in filing appeal is due to non service of assessment order- Delay was condoned.[S.41(1)]
The Tribunal held that the assessee was not served with the assessment order and was not served or deemed to have been served at the address as per the permanent account number database or at the address as appearing in the return of income, and that due to non-service of the assessment order, the assessee was prevented by reasonable cause in filing the appeal before the CIT (A). (AY. 2013-14)
ITO v. Mohinder Pal Singla (2022)97 ITR 587 (Chd) (Trib)

ACIT v. Manaksia Ltd. (2022)97 ITR 433 (Kol) (Trib)

S. 253 : Appellate Tribunal - Delay in filing Appeal — Due to Pandemic situation Supreme Court excluding period from 15-3-2020 till 28-2-2022 for the purpose of counting limitation — Delay was condoned.

The Tribunal held that due to the pandemic situation prevailing in the whole world, including India, the Supreme Court, had held that the period from March 15, 2020, till February 28, 2022, shall be excluded for the purposes of counting limitation. Since the offices were functioning on a very low strength and in a limited manner, there was a reasonable cause for the delay in filing the miscellaneous applications, and therefore, the delay was to be condoned. (AY. 2012-13 to 2017-18)

Dy. CIT v .Sigma Castings Ltd. (2022) 96 ITR 318 (Luck) (Trib)
Dy.CIT v. Kundan Castings (P) Ltd (2022) 96 ITR 318 (Lucknow) (Trib)
Dy. CIT v. Paras Castings and Alloys (P) Ltd 2022) 96 ITR 318 (Lucknow) (Trib)

S. 253 :Appellate Tribunal- Appeal - Company in respect of which Corporate Insolvency Resolution Process Ongoing — Appeal filed after Commencement of Moratorium period — Not maintainable — Liberty to Assessing Officer to prefer appeal afresh after moratorium period over. [Insolvency and Bankruptcy Code, 2016, S. 14]

The Tribunal held that the moratorium period commenced pursuant to order dated May 5, 2021 passed by the Company Law Tribunal and the appeal had been filed by the Department on July 30, 2021, i. e., after commencement of moratorium period and thus it was in contravention of the provisions of section 14 of the Code. The appeal was liable to be dismissed in terms of the provisions of section 14 of the Code with liberty to the Assessing Officer, as soon as the moratorium period was over, to prefer the appeal afresh. (AY. 2013-14)

ACIT v. Wizcraft International Entertainment Pvt. Ltd. (2022)96 ITR 79 (SN) (Mum) (Trib)

S. 253: Appellate Tribunal - Condonation of delay - Commissioner (Appeals) – Form of appeal and limitation - Delay in filing appeal due to in-built E-filing portal of Department — Assessee not benefitted by the delay – Order was set aside . [S. 246, 249]

The delay in filing the appeal was due to the in-built e-filing portal of the Department, and the assessee was not benefitted in any manner by filing the appeal before the Commissioner (Appeals) after the due time. Therefore, the order of the Commissioner (Appeals) was set aside. (AY.2016-17)

IFGL Refractories Ltd. v. Dy. CIT (2022)95 ITR 287 (Kol)(Trib)

S. 253: Appellate Tribunal - Condonation of delay — Delay due to inaction of erstwhile authorised representative — Reasonable cause for delay — Delay condoned.

The Tribunal held that that the delay in filing appeal by the assessee on time was due to inaction of its erstwhile authorised representative, and was to be condoned. (AY.2013-14)

Gurfateh Films and Sippy Grewal Productions (P.) Ltd. v. PCIT (2022)95 ITR 456 (Amritsar)(Trib)

S. 253: Appellate Tribunal – Monetary Limits For Filing Appeals by Department — Tax Effect Less Than Prescribed Limit — Appeal not maintainable [Circular No. 17 Of 2019, Dated 8-8-2019]

The Tribunal held that the tax effect in the appeal filed by the Department was less than Rs. 50 lakhs and in view of the Central Board of Direct Taxes Circular No. 17 of 2019, dated August 8, 2019 ([2019 416 ITR (St.) 106), the appeal of the Department was dismissed as not maintainable. (AY. 2011-12)

Harman Connected Services Corporation India P. Ltd. v. Dy. CIT (2022)95 ITR 1 (Bang)(Trib)

S. 253: Appellate Tribunal – Condonation of delay – Counsel diagnosed with brain tumour – Counsel did not inform - Assessee cannot be penalized for lack of communication or inaction on the part of the Counsel – Sufficient and reasonable cause exist for condonation of delay. [S. 253(5)]

The Tribunal held that there is no culpable negligence or malafide on the part of the assessee in delayed filing of the present appeal and he was under the bonafide belief that the appeal has been filed by his Counsel who has been engaged for the purposes of filing and arguing the present appeal. Where so instructed, it was the responsibility of the Counsel to file the appeal and where there was inability on his part in filing the appeal though due to his ill-health, it was expected that he should have at least communicated the same to the assessee so that the latter could have taken appropriate alternate measures and steps to file the appeal which unfortunately has not happened in this instant case. The assessee therefore cannot be penalized for lack of communication or inaction part of the Counsel. The Tribunal further held that there exists sufficient and reasonable cause for condoning the delay in filing the present 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 and the assessee deserve to be heard on merits of the case and condoned the delay.(AY. 2013 -14)

Rana v. ITO (2022) 215 TTJ 391 /210 DTR 71(Chd)(Trib)

S. 253 : Appellate Tribunal –Private company — Recovery of tax — Name struck down from ROC under section 248 of Companies Act, 2013 Arrears of income-tax due —

Appeal to Tribunal does not become infructuous - Appeal is maintainable [S. 68, 179 ,248 , 250, Companies Act , 2013 , S.248 , 250]
]

Assessee filed an appeal before Tribunal challenging the order of the Commissioner (Appeals) which confirmed additions made by the Assessing Officer under section 68. Revenue contended that the name of the assessee-company was struck down from the Registrar of Companies (ROC) under section 248 of CA Act, 2013 thus, the appeal filed by the assessee would become infructuous. Tribunal held that as per sub-section (6) of section 248 of Act, 2013 it is the duty of the Registrar to make provision for discharging the liability of the company before passing an order for struck off under sub-section (5) to section 248 and if there was any tax due from the struck off company, revenue can invoke section 226(3) or 179 of Act, 1961 for satisfying such tax demands. In view of sub-section (6) and (7) of section 248 and section 250 of Act 2013, when revenue had not forgone right to recover the tax due on grounds of the company being struck off by ROC, the right of the assessee to determine tax liability in due process of law could not be denied by dismissing appeal pending before Tribunal . Accordingly, the certificate of incorporation issued to the assessee company could not be treated as cancelled and the appeal filed by struck off assessee-company would be maintainable. (AY. 2008 -09 , 2014-15)
Dwarka Portfolio (P.) Ltd. v. ACIT (2022) 195 ITD 491 / 99 ITR 620(Delhi) (Trib.)

Shastri Buildcon P.Ltd v. ACIT (2022) 99 ITR 620 (Delhi) (Trib)

Vavasi Telegence P .Ltd v. ACIT (2022) 99 ITR 620 (Delhi) (Trib)

S. 253 : Appellate Tribunal –Managing Director or Director-Appeal signed by General-Not having valid power of Attorney-Appeal was dismissed in limine [S. 140 (c) Rules, 45, 47]

As per provisions of section 140(c) of the Act in the case of a company, the appeal was to be verified by the managing director or if the managing director was not available same was to be verified by any director. On the facts since the appeal filed before the Tribunal was verified by General Manager (GM) instead of the managing director or director and GM did not hold a valid Power of Attorney, appeal was dismissed in limine. (AY. 2008-09)
Bangalore Electricity Supply Co. Ltd. v. DCIT (2022) 195 ITD 188 (Bang) (Trib.)

S. 253 : Appellate Tribunal-Monetary limits-Circular specifying monetary limits for the department is retrospective in nature-the circular applies to already pending as well as new appeals.[S. 253(4)]
The department filed 3 appeals, for all of whom the tax effect was less than Rs. 50 lakhs. Before the Hon'ble ITAT, the assessee argued that Circular No. 17/2019 dt. 08/08/2019 issued by CBDT increased the monetary limit for filing the appeals by the Department from Rs. 20 lakhs to Rs. 50 lakhs. As the circular had retrospective applicability, the present appeals were also covered by this circular and therefore the department appeals were to be dismissed. The Hon'ble ITAT held that Circular No. 17/2019 simply enhanced the monitory limit and the directions given earlier in Circular no. 3/2018 dt. 11/07/2018. Hence, the amended Circular No. 17/2019 is also applicable to the pending appeals as has been specified

in para 13 of the original Circular no. 3/2018. Accordingly, the department appeals filed in the present case were to be dismissed. (AY. 2018-19 & 2019-20)
ACIT v. Northern Motors Private Limited (2022) 216 TTJ 43 (UO) (Raipur)(Trib.)

S. 253 : Appellate Tribunal-Appeal-Appeal filed by a company, struck off by the time it was taken up for hearing-Appeal is maintainable [S. 68, 179, Companies Act, 2013, 248(1), 248(5) 248(6)]

The assessee challenged the order passed by the CIT(A) confirming the addition u/s 68 of the Act. At the time of hearing of the appeal the Revenue contended that the name of the assessee company has been struck off by the Registrar of Companies NCT of Delhi and Haryana and consequently the appeal filed by the assessee has became infructuous and prayed that the appeal be dismissed as not maintainable. The Tribunal passed an interlocutory order holding that the appeal is maintainable and the same has to be decided on merits and directed the Office to list the appeal before regular bench for hearing. Tribunal Relied on CIT v. Gopal Shri Scrips Pvt Ltd 2019 (3) TMI 703 (SC).(TS-499-ITAT-2022 (Delhi) (AY. 2014-15) Dt. 27-5 2022)
Dwarka Portfolio Pvt Ltd v.ACIT (2022)) 99 ITR 620 / 195 ITD 491 (Delhi)(Trib.)

S. 254(1) : Appellate Tribunal-Duties-Powers-Admit new claim-Claiming deduction of expenditure erroneously treated in return as capital-Tribunal justified in entertaining.[S. 37 (1)]

In an appeal before the Tribunal the assessee has raised the additional ground which was allowed. On appeal High Court reversed the order of the Tribunal. On appeal to Supreme Court allowing the appeal of the assessee the Court held that the Tribunal entertained the claim as permissible, relying on the dictum of the court in National Thermal Power Co. Ltd. v. CIT [1998] 229 ITR 383 (SC). Further, the Tribunal had also expressly recorded the no-objection given by the Department. Moreover, the limitation on accepting new claims would apply to the assessing authority but would not impinge upon the plenary powers of the Tribunal bestowed under section 254 of the Act.(AY. 1997-98)

Wipro Finance Ltd. v CIT (2022)443 ITR 250/ 212 DTR 269 /326 CTR 113 / 287 Taxman 155 /137 taxmann.com 230 (SC)
Editorial: Decision in CIT v. Wipro Finance Ltd (2010) 325 ITR 672 (Kran)(HC) reversed.

S.254(1): Appellate Tribunal-Duties-ITAT misdirected by going into the facts of assessment order dated 31.03.2016 when the appeal arose out of order dated 15.12.2017-Order of Tribunal was remanded for passing a fresh order after verifying the records. [S. 148, 148, 151, 260A]
In the present case, the first reassessment proceedings were initiated after obtaining approval from the Additional CIT, Range-3, Jamshedpur, where subsequently reassessment order dated 31.03.2016 was passed. Thereafter the case was reopened once again after taking the approval of PCIT-Jamshedpur, where the reassessment order was passed on 15.12.2017. The appeal was filed before the CIT(A) against the order dated 15.12.2017, which vide order dated 14.12.2018 dismissed the appeal of the assessee. Being aggrieved an appeal was filed

before the ITAT who set aside the order dated 31.03.2016 after recording a finding that the reassessment proceedings were initiated after taking approval from Addl. CIT, Range-3, Jamshedpur whereas the approval of Pr. CCIT or PCIT should have been obtained. The High Court observed that the ITAT misdirected itself by going into the facts of the reassessment order dated 31.03.2016 where the appeal arose out of the reassessment order date 15.12.2017. By allowing the appeal of the assessee which arose from CIT(A) order dated 14.12.2018 which was against the reassessment order dated 15.12.2017 the ITAT has adversely affected the legality and validity of the reassessment order dated 15.12.2017. Therefore, the matter was remanded to the ITAT for fresh adjudication. (AY. 2010-11)

PCIT v. Roshan Maheshwari (Proprietor of M/s Maheshwari Minerals) (2022) 219 DTR 499/(2023) 330 CTT 603 (Jharkhand)(HC)

S. 254(1) : Appellate Tribunal-Duties-Remand by High Court-Industrial undertakings-Infrastructure development-Industrial Park-Tribunal is required to record finding of its own and could not merely remand matter to Assessing Officer [S.80IA(4)(iii]

Assessee-company is engaged in building, promotion and development of land. Assessee claimed deduction under section 80-IA(4)(iii) of the Act. Assessing Officer disallowed the claim. On appeal, High Court remanded matter Industrial Park to Tribunal to record a finding whether assessee complied with conditions laid down under Industrial Park Scheme to be eligible to claim deduction under section 80-IA(4)(iii). Tribunal without recording any findings on its own remanded matter to Assessing Officer. On appeal the Court held that since Tribunal being last fact finding authority was required to comply with direction issued by High Court, matter could not be remanded to Assessing Officer and the order of Tribunal was set aside. (AY. 2009-10)

Gopalan Enterprises (India) (P) Ltd. v. CIT (2022) 217 DTR 241 / 140 taxmann.com 235 (Karn)(HC)

S. 254(1):Appellate Tribunal-Duties-Cash credits-Share application money-Short term unsecured loan-Failure to record reasons-Matter was remanded to Tribunal.[S. 68]

Assessee raised share application money and short-term unsecured loan from a company. Assessing Officer added the amount as cash credits. Commissioner (Appeals) deleted the addition. On appeal by Revenue the Tribunal confirmed order of Commissioner (Appeals) stating that revenue could not controvert factual findings recorded by Commissioner (Appeals). On appeal the Court held that there was nothing on record to indicate that any concession was permitted by revenue to be made before Tribunal. Since revenue had been contesting matter and Tribunal being last fact finding authority, in fitness of things, should record reasons to support its conclusion and such course having not been adopted by Tribunal, order passed by Tribunal was set aside and matter was remanded (AY. 2012-13)

PCIT v. LDS City Projects (P.) Ltd. (2022) 289 Taxman 484 (Cal)(HC)

S. 254(1) : Appellate Tribunal-Duties-Limitation-Share capital-Cash credits-Revision-Lack of enquiry-Appeal dismissed on the ground that issues raised in appeals were covered by several orders passed by Tribunal-Not dealt with merits-Matter was sent back to Tribunal to take a decision [S. 68, 260A,263]

An order was passed by Principal Commissioner under section 263 on ground that there was lack of proper enquiry as to issue of share capital premium. Assessee preferred an appeal before Tribunal against said order on ground that order under section 263 was barred by limitation. Tribunal held that issues raised in appeals were covered by several orders passed by Tribunal including order in case of Subhlakshmi Vanijya (P.) Ltd. v. CIT [2015] 60 taxmann.com 60/155 ITD 171 (Kol)(Trib.). Tribunal has not dealt with merit of the case. On appeal allowing the appeal the Court held that Tribunal not having touched upon merits of assessee's case, matter was sent back to Tribunal to take a decision on merits and in accordance with law. (AY. 2009-10)

Olympus Suppliers (P) Ltd v PCIT (2022) 288 Taxman 41 (Cal)(HC)

S. 254(1): Appellate Tribunal-Duties-Procedure for registration –Trust or institution-Activities Order of Tribunal granting registration without considering whether activities of trust charitable-Order not valid-Matter remanded to Tribunal [S. 11(4), 11(4A) 12AA]

High Court held, that without properly examining the activities carrying on by the assessee-trust and utilisation of the surplus funds received by it, in the light of the documents furnished, the Tribunal, merely referring to the objects of the assessee, opined that the purpose of the assessee was nothing but education. Such reasoning of the Tribunal without proper verification of the requisite materials could not be countenanced. The order of the Tribunal was not valid. Matter remanded to Tribunal

CIT v. Shri Venkatachalapathy Education and Charitable Trust (2022)445 ITR 214/ 288 Taxman 49 (Mad)(HC)

S. 254(1) : Appellate Tribunal-Duties-Housing project-Tribunal cannot differ from earlier order of Tribunal in assessee's own case and follow the order of Tribunal in another assessee-The matter has to be referred to larger Bench in case the Tribunal desires to differ from earlier order of the Tribunal-The Tribunal should have considered the order of the High court which was placed on record through rectification application-Order of Tribunal is set aside.[S. 80IB(10), 254(2, 260A, Art, 226]

The original assessment of the appellant was completed u/s 143(3) of the Act wherein the deduction u/s 80IB(10) was allowed. For the Assessment year 2009-10 the Assessing Officer disallowed the claim on the ground that the approval was granted on 7-10-2002 hence the Assessee is not eligible for deduction u/s 80IB(10) of the Act. CIT(A) allowed the claim which was affirmed by the Tribunal and appeal of the revenue was dismissed by the High Court. While the deciding the appeal for the Assessment year 2007-08 the CIT (A)) following the order for the Assessment year 2009-10 decided the issue on merit as well as on reopening of assessment in favour of the assessee. Revenue filed an appeal before the

Tribunal. Tribunal without following the order of the Tribunal for the Assessment year 2009-10 followed the order of the Tribunal in the case of Bhavya Construction v. ACIT (2017 77 taxmann.com 66 (Mum) (Trib) and allowed the appeal of the revenue. The Assessee filed Miscellaneous petition which was dismissed. The assessee filed an appeal as well as writ before the High Court. Allowing the petition the Court held that the Tribunal cannot differ from earlier order of Tribunal in assessee's own case and follow order of Tribunal in another assessee. In case the Tribunal desires to differ from earlier order the matter has to be referred to larger Bench. The Court also held that the Tribunal should have considered the Order of the High court which was placed on record through rectification application. The order of the Tribunal was quashed and set aside with the direction that the Tribunal should decide the appeal afresh on its own merits in the light of observations made in the order. (ITA No. 127 of 2021, WP No. 1217 of 2020 dt 7-6-2022)(AY. 2007-08)

Omega Investments and Properties Ltd v. CIT (Bom)(HC) www.itatonline.org

S. 254(1) : Appellate Tribunal-Duties-Transfer pricing-Arm's length price-Comparable-Government companies-Directions issued to Tribunal to consider other grounds of appeal [S.92CA, 254(2) Art, 226]

On writ it was contended that the Tribunal inadvertently ruled ground nos. 2, 3 and 5 in favour of the Department without evaluating the merits of the case or giving an opportunity to the assessee to argue the same, despite the fact that it was clearly represented by the assessee that the said grounds were academic in the nature in the light of earlier proceedings. Allowing the petition Tribunal was directed to hear the parties to the extent of considering the issues in respect of (i) computation of income, (ii) the cross objections filed by the assessee in making the transfer pricing adjustment, (3) in rejection of the comparability anlaysis of the assessee by the Transfer Pricing Officer, and (iv) the computerized timesheet maintained and submitted by the assessee not being be relied on by the Department.(AY.2010-11)

Jacob Engineering India Pvt. Ltd. v ACIT (2022) 440 ITR 262/ 285 Taxman 326 (Bom) (HC)

S. 254(1) : Appellate Tribunal-Powers-Tribunal has jurisdiction to allow Department to raise new ground and remand matter to Transfer Pricing Officer for enquiry and action [S. 92C]

Held that the Tribunal has jurisdiction to allow Department to raise new ground and remand matter to Transfer Pricing Officer for enquiry and action. Followed CIT v. Assam Travels Shipping Service (1993) 199 ITR 1 (SC) (AY.2011-12)

PCIT v. Apollo Tyres Ltd. (No. 3) (2022)447 ITR 431 (Ker)(HC)

S. 254(1) : Appellate Tribunal-Powers-Additional grounds-Excise duty, subsidy-Shown as revenue receipt-Tribunal was justified in admitting additional grounds [S. 4]

In the return of income the assessee has shown the subsidy as revenue receipt. On appeal before Tribunal, assessee raised an additional ground that excise duty, subsidy and interest subsidy received by it from State under 'New Industrial Policy and Other Concessions Scheme' were to be treated as capital receipt. Tribunal admitted said additional ground raised by assessee and allowed excise duty, subsidy and interest subsidy to be treated as capital receipts. On appeal the Revenue contended that Tribunal had wrongly admitted additional ground raised by assessee.. Tribunal dismissed the appeal of the Revenue and affirmed the order of the Tribunal. (AY.2011-12)

PCIT v. Crystal Crop Protection (P.) Ltd. (2022) 289 Taxman 289 (Delhi)(HC)

S. 254(1) : Appellate Tribunal-Powers-Deletion of penalties by the CIT(A) without obtaining remand report-Order remand-Held to be justified-Certain observation are deleted.[S. 271D, 271E, R. 46A]

Court held that the Tribunal had only remanded the matter for fresh consideration and had given opportunity to the assessee to bring in evidence also. The assessee could not be said to be prejudiced on account of the remand to the Assessing Officer. However while remanding the case, the Tribunal made certain observations, which, according to the assessee, caused it prejudice. There were observations in the order passed by the Tribunal that "without examining the copy of cheques physically, she deleted the penalty which is not proper" and "if the assessee fails to produce the necessary evidence the Assessing Officer is at liberty to take adverse inference". For the purpose of entering into a conclusion on the veracity of the claim of the assessee that the transactions in question were through bank accounts, different modes of proof would be available. Physical examination of the cheques alone is not the only method. Direct, indirect or circumstantial evidence can be adduced to satisfy the assessing authority while coming to the conclusion on the issue remanded to it. Hence, the observations of the Tribunal restricting the option of the assessing authority to physical examination of the cheques in question could cause prejudice to the assessee. In the circumstances, while the order of remand in all these cases to the assessing authority, was valid, the assessing authority should consider and pass orders untrammelled by the observations in the order of the Tribunal and be free to accept evidence of any legally acceptable nature produced by the assessee in support of its claim.(AY.2008-09)

Geojit BNP Paribas Financial Services Ltd. v.Add. CIT (2022)445 ITR 662 (Ker)(HC)

S.254(1): Appellate Tribunal-Powers-Jurisdiction of Tribunal confined to subject matter of appeal-Question before Tribunal regarding extent of deduction-Tribunal does not have power to disallow entire deduction[S. 36(1)(iii), 57(iii)]

The assessee was engaged in development and purchased, sold and constructed and leased properties. The assessee was sanctioned a loan from Union Bank of India. The assessee paid certain amoun as advance towards purchase of properties. However, on account of adverse market conditions, the assessee decided to withdraw from the transaction and requested party

to refund the earnest money. The party refunded the amount. The assessee thereafter lent money to other shareholders and made inter corporate deposits as against interest. The assessee calimed the interest paid as allowable deduction. On appeal the Tribunal disallowed the entire interest expenditure On appeal the Court held that on the facts and circumstances of the case, the assessee was entitled to deduction under section 57(iii) of the Act. In any case, the Tribunal exceeded its jurisdiction in disallowing the entire interest expenditure as the power of the Tribunal was limited to passing an order in respect of subject matter of the appeal. Relied on Seth R.Dalmia v.CIT (1977) 110 ITR 644 (SC), CIT v. Rajendra Prasad Moody (1978) 115 ITR 519 (SC), CIT v. Corawara Plastic and General Industries (P) Ltd (2007) 289 ITR 224 (All)(HC) (AY.2009-10)

West Palm Developments LLP v.ACIT (2022)445 ITR 511 (Karn)(HC)

S. 254(1) : Appellate Tribunal-Powers-Reassessment-Assessee not Co-operated-Order of remand is held to be justified [S. 144, 147, 148]

Dismissing the appeal the Court held that the Tribunal had restored the matter to the file of the Assessing Officer for fresh decision. No prejudice was caused to the assessee in restoring the matter back to the file of the Assessing Officer to pass a speaking order on the objections and then to conclude the assessment. The order of remand on this issue was valid. (AY. 2005-06)

G. Venkatesh v. ITO (2022) 444 ITR 527 (Karn)(HC)

S. 254(1) : Appellate Tribunal- Powers- Additional grounds – Special Audit – Barred by limitation – Legal ground – Admitted for adjudication . [S. 142(2A) 153]

Held that the additional ground challenges the validity of the assessment order passed on account of it being barred by limitation, the said additional ground is a legal ground and the same is admitted for adjudication. Followed National Thermal Power Co. Ltd. vs CIT (1998) 229 ITR 383 (SC). (AY. 2014 -15)

Haryana State Industrial & Infrastructure Development Corpn. Ltd. v. ACIT (2022) 220 TTJ 217 (Chd)(Trib)

S. 254(1): Appellate Tribunal- Powers- Delay in filing appeal- Delay due to clarification filed by assessee- Rectification Application also pending- Delay condoned.

Held, that during the pendency of the appeal, there was a change in the jurisdiction of the Commissioner (Appeals) from Jaipur to Ajmer, as a result, certain clarification filed by the assessee regarding reference of value of the property, obtained through an RTI application, apparently escaped the attention of the Commissioner (Appeals) and the consequent rectification sought by the assessee was kept pending. Thus, the explanation offered for the delay in filing the appeal was reasonable and acceptable and the delay in filing the appeal was condoned. (AY. 2009-10)

Dhoot Stono Crafts P. Ltd. v. ACIT (2022)98 ITR 249 (Jaipur) (Trib)

S. 254(1) : Appellate Tribunal – Duties-Faceless scheme – Non issue of notification- Till such time notification is issued as required under S. 255(8), the provisions of S. 255(7)

are not activated the Tribunal has the jurisdiction to hear the instant appeal before it in physical form. [S. 255(7) , 255(8) 255(9)]

Question of jurisdiction of an appellate authority cannot be raised to the appellate authority itself . It has to be raised to other competent constitutional forum. Word used in S. 255(7) is "may". Prerogative to make the provisions of S. 255(7), (8) and (9) operate is exclusively in the domain of the legislature. Till such time the notification is issued as required under S. 255(8), the provisions of S. 255(7) do not itself activate. Legislature in its own wisdom has set the date for the purpose of activating S. 255(7), (8) and (9) on 31st March, 2023. That prerogative with the legislature is not something that can be questioned by this Tribunal consequently, the issue need not be referred to the President, Tribunal or to the Central Government and this Tribunal has the jurisdiction to hear the instant appeal before it in physical form as required. (AY.2008-09)

L. A. Development v. CIT (2022) 215 DTR 153 /218 TTJ 386 / 142 taxmann.com 280 (Cuttack)(Trib)

S. 254(1) : Appellate Tribunal- Powers—Delay was condoned - Due to illness and financial crisis and the death of his authorized representative- Non appearance before the lower authorities – Matter remanded to the Assessing Officer . [S. 144]

Held that prolonged illness and financial pressure faced by the assessee on account of slow-down in his business and criminal intimidation by the creditors and the criminal proceedings against the assessee constituted reasonable cause for the delay in fling the appeal beyond the control of the assessee. delay in fling the appeal was condoned . Assessee having failed to make proper representation before the lower authorities due to his illness and financial crisis and the death of his authorized representative, the order of the AO is set aside with a direction to complete the assessment after giving an opportunity to the assessee. (AY. 2013 -14)

Kishor Tarachand Patil v. ITO (2022) 219 TTJ 31 (UO) (Pune) (Trib)

S. 254(1) : Appellate Tribunal- Powers- Additional grounds -Issue not raised before the Commissioner (Appeals) — Reassessment - Validity – Application made as per Income-Tax (Appellate Tribunal) Rules, 1963, Rule 27 the was admitted – Reassessment order was quashed . [S. 147 , 148 , Income-Tax (Appellate Tribunal) Rules, 1963, Rule 27]

In the appeal filed by the Revenue the assessee filed an application as per Rule 27 of the Income-Tax (Appellate Tribunal) Rules, 1963, challenging that when the Assessing Officer not making addition pertaining to reasons recorded for reopening assessment, other additions cannot be made . The Revenue contended that the assessee's application under rule 27 of the Income-tax (Appellate Tribunal) Rules, 1963 was not maintainable since the Commissioner (Appeals) had nowhere "decided" the reopening issue against him. Tribunal following the ratio in Peter Vaz v. CIT(2021)) 436 ITR 616 (Bom)(HC) admitted the application and reassessment order was quashed . .(AY.2012-13)

ITO v. Hassab Realty Pvt. Ltd. (2022) 99 ITR 315 (Pune) (Trib)

S. 254(1): Appellate Tribunal- Duties - Precedent -Additional ground –Legal claim – Can be raised first time before Appellate Tribunal - Order in Assessee's own case for earlier year against - Order passed by Tribunal without benefit of rulings of High Courts and Supreme Court and Contrary thereto — Not to be followed- High Court order to be followed .

Tribunal held that the Tribunal in the assessee's own case for an earlier year holding against it, was contrary to judgments of the High Courts and the Supreme Court wherein a similar issue had been decided in favour of the assessee and the Tribunal did not have the benefit thereof. Order of High Court to be followed . Legal claim can be raised first time before Appellate Tribunal . (AY. 2003 -04 ,2006 -07 to 2008 -09)

Jindal Steel and Power Ltd. v Add. CIT (2022)97 ITR 516 (Delhi) (Trib)

S. 254(1): Appellate Tribunal – Duties - Decision of Court -Precedent - Difference of opinion among High Courts — Tribunal Bound by view of jurisdictional High Court. [Art . 227]

The decision of a High Court is binding on all the subordinate courts and authorities or Tribunals under its superintendence throughout the territories in relation to which it exercises jurisdiction within the terms of article 227 of the Constitution of India . When discordant views are rendered by different High Courts, an inferior authority under one of such High Courts is bound to follow its jurisdictional High Court notwithstanding that the view of the non-jurisdictional High Court may sound more appealing on individual level. The principle of following a view in favour of the assessee when contrary views are available, applies to the authorities acting under neutral High Courts, namely, which have not expressed any opinion—for or against—on that point. Once the jurisdictional High Court decides a particular issue in a particular manner, that manner has to be mandatorily followed by all the authorities acting under it so long as it holds the field and is not deactivated by the Supreme Court. (AY. 2015-16)

Jayawant Gajanan Sutar v. ITO (2022)96 ITR 3 (SN) (Pune) (Trib)

S. 254(1) : Appellate Tribunal- Powers- Additional legal grounds – Admitted – Matter remanded to CIT(A) [S. 147, 148, 250]

Held that the additional grounds of appeal raising legal issues were admitted for adjudication and directed the CIT(A) while deciding on merits shall also consider the additional grounds of appeal raised before the Tribunal on jurisdictional issue and shall grant reasonable opportunity of hearing and to make submissions before deciding the appeal, in accordance with law.(AY. 2012-13)

Lata Holding P. Ltd. v .ITO (2022)100 ITR 249 (Mum)(Trib)

S. 254(1) : Appellate Tribunal- Powers-Additional ground jurisdiction - Ground to challenge the jurisdiction of the AO needs to be raised within the limitation period prescribed under section 124- Assessee being persistent non-compliant cannot challenge the jurisdiction of then AO for the first time before the Tribunal. [S. 120, 11, 12A, 13 , 119, 124, 127]

Assesseewas an educational institution assessed as a Trust. However, it was neither registered under section 12A nor did it claim any exemption under section 10, 11, 12 or 13 of the Act. Notice under section 143(2) was issued by ITO, Cuttack; thereafter the case was transferred from ITO, Cuttack to ITO (E), Bhubaneswar. There was persistent non-compliance on the part of Assessee during the course of proceedings before the AO and CIT(A). Before the Hon'ble ITAT, the Assessee for the first time raised additional legal grounds contending that by virtue of CBDT Circular 52/2014; the ITO(E), Bhubaneswar had no jurisdiction to pass Assessment Order as Assessee was not claiming any exemption under section 10, 11 12 or 13. It was also contended that transfer of case from ITO, Cuttack to ITO (E) Bhubaneswar was made without show cause and without passing the order required under section 127.Hon'ble ITAT held that as per the decision of Hon'ble High Court of Patna in the case of Gurukul vs. CIT(E) [WP No.: 9170/2016] held that order passed by ITO (Exemption) was void-ab-inito;as it did not have jurisdiction over the Assesese in that case; by virtue of CBDT Circular 52/2014. However, in the facts of the present case, the Assessee neither raised the objection against the jurisdiction of the ITO (Exemption), Bhubaneswar, nor did it participate during the course of proceedings before the AO and CIT(A). It was held that objection against the jurisdiction, if at all is to be raised, then the same is required to be raised within one month from the service of impugned notice as provided under section 124. Since, Assesee did not challenge the jurisdiction within one month, it cannot now challenge the same during the proceedings before the ITAT. Accordingly, the legal ground challenging the jurisdiction was dismissed. (AY.2013-14)

Nishakar Educational Trust v. ITO(E) (2022) 214 DTR 353 / 208 TTJ 593 (Cuttack) (Trib)

S. 254(1) : Appellate Tribunal-Powers-Additional grounds-Farming genetically modified seeds in lands leased from farmers-Additional evidence filed by Revenue based on Search proceedings-Matter remanded [S. 2(IA), 10(1), 132, 153A, ITAT R. 29]

Assessee-company was engaged in business of research, production and sale of agricultural seeds. Assessee claimed exemption under section 10(1). Assessing Officer held that assessee-company entered into an agreement with farmers, wherein assessee-company with co-operation of farmers produced hybrid seeds by supplying foundation seeds and other agricultural input to farmers hence denied claim on ground that assessee-company was neither cultivating seeds nor deriving income from agriculture. CIT (A) allowed the claim. On appeal the Tribunal held that proving of agricultural activities by assessee after taking land on lease was sine qua non for claiming benefit under section 10A and documents seized during search proved otherwise, thus, additional facts filed by revenue were required to be admitted.Documents/evidences recorded during course of search under section 132 had bearing on outcome of case, such documents/evidences could not be rejected merely on ground that same were subject matter of proceedings under section 153A.Matter was to be remanded to Assessing Officer,matter remanded. (AY. 2012-13, 2013-14)

Nuziveedu Seeds Ltd. v. DCIT (2022) 196 ITD 53/ 219 TTJ 1 (Hyd) (Trib.)

S. 254(2): Appellate Tribunal-Rectification of mistake apparent from the record – Accommodation entries-Bogus purchases-Evidences/statements collected from the accommodation entry provider has not been provided, ITAT has not even dealt with that objection-Order of Jurisdictional High Court-Order of Tribunal set aside [Art, 226]

Petitioner raised a grievance before ITAT that CIT(A) has erred in sustaining 12.5% disallowance on account of bogus purchases and also in upholding the validity of re-opening. In the Appeal before ITAT various grounds were raised including the challenge to re-opening itself. According to Petitioner there was no tangible material. Moreover Petitioner also alleged that reliance has been placed upon information received by Revenue from Maharashtra Sales Tax Authority that Assessee was beneficiary of Hawala accommodation entries from entry provider by way of bogus purchase. It is also alleged that accommodation entry provider has deposed and admitted before Maharashtra Sales Tax Authority vide statement/affidavit that they were engaged in providing bogus accommodation entries wherein bogus sales bills were issued without delivery of goods, in consideration for commission. It is stated that Assessee was one of the beneficiaries of this bogus entries of sale of material from Hawala entry providers. These accommodation entry providers on receipt of cheques from parties against bogus bills for sale of material, later on withdrew cash from their bank accounts which were returned to beneficiaries of bogus bills after deduction of their agreed commission. Petitioner challenged that order before the Income Tax Appellate Tribunal (ITAT) which was dismissed. The miscellaneous application of the petitioner was also dismissed. On writ the petitioner contended that these details/information like admission of accommodation entry provider before Maharashtra Sales Tax Authority implicating Petitioner has not been provided to Petitioner despite repeated requests. This ground has been raised before ITAT. The Honourable Court referred the judgement in In S. Nagaraj & Ors. v. State of Karnataka, 1993 Supp (4) SCC 595, Sahai, J. stated:

> "15. Justice is a virtue which transcends all barriers. Neither the rules of procedure nor technicalities of law can stand in its way. The order of the Court should not be prejudicial to anyone. Rule of stare decisis is adhered for consistency but it is not as inflexible in Administrative Law as in Public Law. Even the law bends before justice. Entire concept of writ jurisdiction exercised by the higher courts is founded on equity and fairness. If the Court finds that the order was passed under a mistake and it would not have exercised the jurisdiction but for the erroneous assumption which in fact did not exist and its perpetration shall result in miscarriage of justice then it cannot on any principle be precluded from rectifying the error. Mistake is accepted as valid reason to recall an order. Difference lies in the nature of mistake and scope of rectification, depending on if it is of fact or law. But the root from which the power flows is the anxiety to avoid injustice. It is either statutory or inherent. The latter is available where the mistake is of the Court. In Administrative

Law, the scope is still wider. Technicalities apart if the Court is satisfied of the injustice then it is its constitutional and legal obligation to set it right by recalling its order"….. (p.618)".

The Honourable Court allowed the petition and directed the Tribunal to follow the ratio in PCIT v. Mohommad Haji Adam & Co. ITA No. 1004 of 2016 dated 11/02/2019.

Mithalal B.Jain v. ITO(2022) 214 DTR 25 (Bom)(HC)

S. 254(2): Appellate Tribunal-Rectification of mistake apparent from the record-Appeal which was dismissed and review petition also dismissed-Dismissal of rectification order by the Tribunal is justified. [S. 47(xiv), 260A, Art, 226]

The petitioner has claimed exemption u/s 47(xiv) which was disallowed. order was affirmed by the CIT(A) and Tribunal. Appeal to High Court was dismissed.(ITA No. 1731 of 2014 dt 18-7 20016. SLP was dismissed (SLP (C) No. 23753/ 2016 dt 17-8 2016, Review petition was also dismissed by the High Court R. P(L) No. 36 of 2016 dt..9-2-2017. The petitioner filed an application under section 254(2) of the Act too recall the order which was dismissed on 5-7 2019. The petitioner filed writ petition against the dismissal of order by the Tribunal. Dismissing the petition the Court held that the Tribunal has correctly applied the principle that under the guise of rectification of an error, a party cannot be permitted to recall the order on merits. Thus, no fault can be found with the impugned order. Referred CIT v. Reliance Telecom Ltd [2021] 133 taxmann.com 41(SC)(WP No. 247 of 2020, dt. 28.01.22) (AY. 2009-2010)

Kantilal Gopalji Kotecha v. CCIT (Bom.)(HC) (UR)

S.254(2): Appellate Tribunal-Rectification of mistake apparent from the record-Department had withdrawn the Appeal that was pending before the Tribunal based on a Circular Circular No 3 of 2018 dt. 11-7-2018 (2018) 405 ITR 29(St)-Later the Circular was amended and exceptions were added-Department filed miscellaneous application to recall the withdrawn appeal-The Writ petition of Revenue was dismissed.[Art. 226]

Department had withdrawn the Appeal that was pending before the Tribunal based on the Circular No 3 of 2018 dt. 11-7-2018 (2018) 405 ITR 29(St) The said circular was amended on 20th August, 2018,(2018) 407 ITR 7 (St) wherein two new exceptions were included. The department filed the Miscellaneous Application to stating that the amended circular will prevail and therefore, the order of withdrawal of Appeal should be recalled and Appeal should be restored. The Tribunal rejected the miscellaneous application. On writ dismissing the petition the Court held that the newly added exceptions were not there when the Appeals were withdrawn on 3rd August, 2018. Therefore, it cannot be stated that there was any mistake apparent from the record in the order of Tribunal to rectify the same and amend the order passed by it under Sub Section (1) of Section 254 of the Act.(WP No.852 of 2020 dt 13-9 2021)

PCIT v. Qmax Synthetics Pvt. Ltd.(Bom)(HC)(UR)

S. 254(2): Appellate Tribunal-Rectification of mistake apparent from the record –Penny stock-Monetary limits for appeals by department-Appeal not filed in terms of Special order of Board-Dismissal of appeal due to low tax effect-Order of Tribunal is affirmed-Writ of revenue is dismissed.[Art, 226

The Tribunal, in a batch of cases, dismissed Department's appeals on the ground of low tax effect by order dated August 14, 2019. The Department filed applications for rectification of its order contending that the case fell within the exception as mentioned in Circular No. 23 of 2019 dated September 6, 2019 ([2019] 417 ITR (St.) 4) issued by the Central Board of Taxes as the transactions entered into by the assessee concerned penny stock. Department filed writ against the dismissal of rectification u/s 254 (2) of the Act. Dismissing the petition the Court held that the appeals including the appeal in the case of the assessees, which were disposed of by the Tribunal by a common order dated August 14, 2019 could not be said to have been filed pursuant to the special order of the Board in view of Circular dated September 6, 2019 read with the office memorandum dated September 16, 2019, and therefore, the Tribunal had not committed any mistake apparent from the record, which would require rectification.

PCIT v. Harish Keshavlal Patel (2022) 441 ITR 431 (Guj) (HC)

S. 254(2): Appellate Tribunal-Rectification of mistake apparent from the record –Penny stock-Monetary limits for appeals by department-Appeal not filed in terms of Special order of Board-Dismissal of appeal due to low tax effect-Order of Tribunal is affirmed-Writ of revenue is dismissed.[Art, 226

The Tribunal, in a batch of cases, dismissed Department's appeals on the ground of low tax effect by order dated August 14, 2019. The Department filed applications for rectification of its order contending that the case fell within the exception as mentioned in Circular No. 23 of 2019 dated September 6, 2019 ([2019] 417 ITR (St.) 4) issued by the Central Board of Taxes as the transactions entered into by the assessee concerned penny stock. Department filed writ against the dismissal of rectification u/s 254 (2) of the Act. Dismissing the petition the Court held that the appeals including the appeal in the case of the assessees, which were disposed of by the Tribunal by a common order dated August 14, 2019 could not be said to have been filed pursuant to the special order of the Board in view of Circular dated September 6, 2019 read with the office memorandum dated September 16, 2019, and therefore, the Tribunal had not committed any mistake apparent from the record, which would require rectification.

PCIT v. Harish Keshavlal Patel (2022) 441 ITR 431 (Guj) (HC)

S. 254(2): Appellate Tribunal-Rectification of mistake apparent from the record-Review of order is not permissible-Rejection of application was held to be justified-No appeal lies under section 260A against an order rejecting application-Writ is only remedy [S. 80IB, 260A, Art, 226]

Assessee filed application under section 254(2) for rectification of order of Tribunal on ground that Tribunal had failed to consider certificate of payment of electricity dues to

establish electricity consumption to prove production. Application was rejected on the ground that since a certificate issued subsequent to culmination of above proceedings could not have been produced before any of authorities and it could not have been filed even along with rectification application. Order of rejection was affirmed. Court also held that no appeal lies under section 260A against an order rejecting application filed under section 254(2) in absence of any statutory remedy against it, writ petition is only remedy. (AY. 2005-06)

Kashmir Fabric Industries v. ITAT (2022) 284 Taxman 552 (J&K & Ladakha)(HC)

S. 254(2): Appellate Tribunal-Rectification of mistake apparent from the record-Delay of 1924 days (Eight years)-Condonation of delay was dismissed. [. 260A]

Where there was a delay of around eight years in filing a miscellaneous application before the Tribunal and the reason for the delay was mentioned to be the reason that the concerned officers of the assessee and its tax consultants had retired/changed, the Tribunal was right in concluding that the same was not a sufficient reason to entertain the appeal and condone the delay. Accordingly, dismissal of the miscellaneous application by the Tribunal was correct and does not call for interference. (AY. 2007-08)

South Eastern Coalfields Ltd. v. PCIT (2022) 440 ITR 568 (Chhattisgarh) (HC)

S. 254(2) : Appellate Tribunal-Rectification of mistake apparent from the record –Ex -parte order – Affidavit – Order recalled. [S. 254(1)]

Held, that the assessee may be on good faith or oversight or mistakenly could not file an application for adjournment separately in this case and remained absent in the belief that adjournment application filed in other cases covered the instant case as well and due to these facts did not appear before the Tribunal. The affidavit of the authorised representative confirming the inadvertent mistake on his part, stood uncontroverted by the Revenue. The ex -parte order was recalled .(AY.2006-07)

Systra SAA (Project Office) v. Dy. CIT (I) (2022) 99 ITR 192 (Delhi) (Trib)

S. 254(2) : Appellate Tribunal-Rectification of mistake apparent from the record – Monetary limits for appeals filed by Revenue - – Prosecution – Prosecution against the assessee and its directors -Order dismissing the appeal of the Revenue for within the monetary limits cannot be recalled . [S. 276(2), 278B]

While dismissing the appeal of the Revenue the Tribunal gave the liberty to the Revenue to file miscellaneous applications in case the tax effect in these appeals was found to be more than Rs .500000 . or the case fell in any of the exceptions in the circular . The prosecution was launched against the company and its directors under section 276C(2) read with section 278B of the Act . High Court has granted stay against the prosecution . Revenue filed Miscellaneous application to recall the order of the Tribunal dismissing the appeal on the ground of monetary limits . Dismissing the application the Tribunal held that case of the Revenue did not fall under exception of the Central Board of Direct taxes Circular . Accordingly the miscellaneous application of the Revenue was dismissed . (AY. 2010 -11 , 2011 -12)

ACIT v. Raj Auto Wheels P.Ltd (2022) 100 ITR 245 (Jaipur)(Trib)

S. 254(2): Appellate Tribunal- Rectification of mistake apparent from the record — Jurisdictional High Court -Tribunal's order based on decision of Supreme Court — Supreme Court Dismissing Special Leave Petition filed by Department — Tribunal's order cannot be rectified -No addition can be made in respect of assessments which have become final if no incriminating material is found during search- - ICDs and CFSs are infrastructural facility entitled to deduction under sub-section (4) of section 80-IA.[S.80IA(4), Art. 141]

The Tribunal held that the expression of the Supreme Court that "we do not find any merit in this petition" had to be given its true meaning and understood as resulting in finality in the litigation. Such an order passed by the Supreme Court was a speaking order, which though not merged with the order of the High Court, article 141 of the Constitution of India would apply. Such an order of the Supreme Court becomes the law of the land and would override the judgment of the jurisdictional High Court. Miscellaneous application of the Revenue was dismissed . Tribunal in the order under section 254(1)) has held that no addition can be made in respect of assessments which have become final if no incriminating material is found during search. ICDs and CFSs are infrastructural facility entitled to deduction under sub-section (4) of section 80-IA of the Act . Referred , Kunhayammed & Ors. v. State of Kerala & Ors. 245 ITR 360 (SC) , P CIT v. Best Infrastructure (India) (P.) Ltd. 256 Taxman 63 (SC)(AY. 2012-13 to 2017-18)

Dy. CIT v . Sigma Castings Ltd. (2022)96 ITR 318 (Lucknow)(Trib)
Dy.CIT v. Kundan Castings (P) Ltd (2022) 96 ITR 318 (Lucknow) (Trib)
Dy. CIT v. Paras Castings and Alloys (P) Ltd 2022) 96 ITR 318 (Lucknow) (Trib)

S. 254(2): Appellate Tribunal-Rectification of mistake apparent from the record-Ex-parte order-Dismissed for non-prosecution without dealing with the merits of the case-Time limit of six months does not apply-Application was filed after 678 days of passing of order-Order recalled [S. 254(1), ITAT Rule 24, 25]

The appeal of the assessee was dismissed by the ITAT for non-prosecution without adjudicating on the merits of the case. The application was filed after a period of 678 days for restoring the appeal. Allowing the application the Tribunal held that power to recall the order is different than rectification, merely recalling an ex parte order under Rule 24 of the ITAT Rules does not fall within the ambit of section 254(2) of the Act and there is no prescribed limitation for moving an application for recall the matter. Accordingly the ITAT recalled the matter. (MA.No. 238/ Ahd / 2019 / ITA No. 956/ Ahd/ 2012)

Manjulaben Tomar v.ITO (2022) The Chamber's Journal-July-P. 123 (Ahd)(Trib)

S. 254(2A): Appellate Tribunal –Stay-Recovery-Delay in proceedings not attributable to assessee-Tribunal has the power to grant stay even beyond period of 365 days.[S.254(1))]

Dismissing the appeal of the revenue the Court held that when the delay in proceedings not attributable to assessee, the Tribunal has the power to grant stay even beyond period of 365 days. Referred, DY. CIT v. Pepsi Foods Ltd (2021) 433 ITR 295 (SC).*(*AY.2009-10)

PCIT v. Michelin India Pvt. Ltd. (2022)442 ITR 268 (Mad)(HC)

S. 254(2A): Appellate Tribunal –Stay-Recovery-Delay in disposal of appeal is not attributable to assessee-Tribunal can grant extension of stay of demand beyond 365 days in deserving cases. [Art, 226]

Dismissing the petition the Court held that delay in disposal of appeal is not attributable to assessee. Tribunal can grant extension of stay of demand beyond 365 days in deserving cases.(AY. 2012-13)

PCIT v. Jindal Steel & Power Ltd(2021) 133 taxmann.com 213 (P& H) (HC)

Editorial : SLP of revenue is dismissed; PCIT v. Jindal Steel & Power Ltd. (2022) 284 Taxman 447 (SC)

S. 254(2A): Appellate Tribunal –Stay-Recovery-Assessee deemed in default-Stay of recovery-Appeal is pending before Tribunal-Agreed to deposit 20 percent of disputed demand-Stay was granted to assessee for a period of six months or till such time appeal filed by assessee was disposed off by Tribunal.[S. 220, 254(1)

Assessee filed petition seeking stay of outstanding demand while appeal was pending before Tribunal. Agreed to deposit 20 percent of disputed demand-Stay was granted to assessee for a period of six months or till such time appeal filed by assessee was disposed off by Tribunal.(AY. 2016-17)

Hyundai Motor India Ltd. v. NEAC (2022) 197 ITD 196 (Chennai) (Trib.)

S. 254(2A): Appellate Tribunal –Stay-Recovery-Tribunal can only grant a stay subject to a deposit of not less than 20 per cent of disputed demand, or furnishing of security thereof-Tribunal cannot grant blanket stay as per section 254(1) by making first proviso to section 254(2A) redundant [S. 220(6) 254(1))]

Assessing Officer computed income tax liability and raised interest demand for relevant assessment year. Assessee filed application seeking blanket stay on collection/recovery of same and claimed that he was not in a position to, nor he was required to make payment of any part of disputed tax demands. Held that first proviso to section 254(2A) specifically provides that Tribunal can only grant a stay subject to a deposit of not less than 20 per cent of disputed demand, or furnishing of security thereof, thus, powers of Tribunal under section 254(1), to grant a stay cannot be interpreted as to make first proviso to section 254(2A) redundant. Accordingly it could not be open to Tribunal to grant a blanket stay as same was contrary to scheme of law as visualised under first proviso to section 254(2A). Tribunal granted a conditional stay by directing Assessing Officer to grant stay on collection/recovery of demands, after reasonable security was provided by assessee. (AY. 2018-19)

Hindustan Lever Ltd. v. DCIT (2022) 197 ITD 802/ 220 TTJ 516/219 DTR 238 (Mum) (Trib.)

S. 254(2A): Appellate Tribunal –Stay-Recovery-ITAT has power to grant stay only if the asseessee pays 20 % of the tax in dispute or furnishes equal amount of security of like amount [S. 220(6), 253, 254(1)]

The Assessee filed a stay application before ITAT against demand raised Assessee submitted that most issues were covered and hence blanket stay be granted. It argued that ITAT has powers to grant stay and submitted that new amendment of asking assessee to pay 20% of demand is not applicable as it runs down the power of ITAT. Honourable ITAT held that;
1. When the Hnourable Supreme court held that ITAT has powers to grant stay it also held that these powers cannot be used in a routine manner However these observations apply to when there was no provision in the statute
2. Under the new proviso to sec 254(2A) it categorically states that the ITAT shall pass an order of stay on condition that assessee deposits not less than 20% of demand raised or furnishes security of equal amount
3 Thus the inference drawn by SC prior to amendment is different than the power now provided by the statute
4. Once statute holds that ITAT can grant stay only on deposit of not less than 20% of demand, it is not open to the ITAT to grant stay in violation of such statutory provisions
5. ITAT has been a creature of statute and cannot challenge the reasonableness of this provision which can be done only by the superior court
6. Granting stay without payment would make the provision redundant and otiose
7. No matter how fair just or desirable the case maybe, but still ITAT cannot grant stay without collecting 20% of demand or security of like amount This is reality and the Assessee has to accept it.
Held Assessee to provide security of like amount as most issues were covered (SA No, 116 /M. 2022, in ITA No.. 2125/ Mum/ 2022 dt 26-9-2022)(AY.2018-19)
Hindustan Lever Ltd v. Dy.CIT (2022) 197 ITD 802 (Mum)(Trib)

S. 255 : Appellate Tribunal-Procedure-Functions-Power of President to constitute special bench Appeal disposed of by Regular Bench of Tribunal during pendency of Special Leave Petition of Department-Special Leave Petition was disposed of as academic leaving question of powers of President to constitute special bench open-Strictures against vice president of Tribunal passed by High Court expunged.[S. 255(3) Art, 136,226]
The High Court set aside the order passed by the President of the Appellate Tribunal to constitute a Special Bench to decide the appeal preferred in the case of the assessee. During the pendency of the special leave petition filed by the President, the appeal before the Tribunal was decided and disposed of by the regular Bench. The Supreme Court disposed of the special leave petition as having become academic, without expressing anything on the merits on the legality and validity of the judgment rendered by the High Court and the powers of the President to constitute a Special Bench in exercise of powers under section 255(3) of the Income-tax Act, 1961 and keeping the question of law open. The court, however, expunged the strictures passed in the judgment against the Vice President of the Tribunal.
President, ITAT v. Jagati Publications Ltd. (2022)447 ITR 644/ 219 DTR 161/ 329 CTR 267 /(2023) 290 Taxman 121 (SC)

Editorial: Jagati Publications Ltd v. President, ITAT (2015) 377 ITR 31/ 234 Taxman 527/ 279 CTR 271 (Bom)(HC)

S. 255 : Appellate Tribunal-Procedure-Functions-Appointment of Member-Waiting list-Appointed pursuant directions of Apex Court-Shall be entitled for consideration of notional seniority and other consequential benefits-Entitled to pay only from date of his assuming charge. [Art, 32, 226, 227]

In course of examination for appointment of Members of Tribunal, petitioner was placed in waiting list but his appointment was not confirmed and later he had been appointed in his position in waiting list pursuant to directions of Apex Court, 'in his position in waiting list'. The applicant submitted several representations to consider his notional seniority and consequential benefits from the date of the Selected List.i. e. 22-9 2005 and the same was not considered. The applicant filed application before CAT Bangalore with a prayer inter alia to direct the respondents to consider his representations and to restore his seniority with consequential benefits. On writ the Court held that he shall be entitled for consideration of notional seniority and other consequential benefits and he shall be placed at end of last person appointed in Select List. Thereafter, applicant filed a Misc. Application seeking a clarification that applicant's name shall be placed in the Select List dated 22-9-2005 and to fix the pay with effect from October 2007, on notional basis. The said Misc. application was disposed of with a clarification that applicant would be eligible to be considered in the first list of selection and the seniority benefits would be granted except the salary for the period which he had not worked. The UOI filed writ petition challenging the order of the CAT. Dismissing the petition the Court held that once applicant has been appointed pursuant to the directions of the Apex Court, 'in his position in the waiting list', he shall be entitled for consideration of notional seniority and other consequential benefits. He shall be placed at the end of the last person appointed in the Select List. He shall be entitled for pay only from the date of his assuming charge, which the CAT has rightly granted. Referred Ms.Neelima Shangla Ph.D. Candidate v. State of Haryana (1986) 4 SCC 268.

Induri Rama Rao v. PCIT (2022) 288 Taxman 56 (Karn)(HC)

S. 255 : Appellate Tribunal – Procedure – Functions - Monetary limit – Remand by Division Bench - Objection that appeals ought to be heard by Division Bench – Not tenable – Appeals of earlier year on same issue pending before High Court – Tribunal is not bound to keep appeals for latter years in abeyance – Principle of Res Judicata not applicable . [S. 254(1), 255(3)]

Held that the appeals were fresh appeals, which had been fixed for disposal by a single Member following due process keeping in view the monetary limit under section 255(3) of the Income-tax Act, 1961 . The preliminary objection of the Department that the appeals having initially been heard by the Tribunal by a Division Bench, ought to be heard by a Division Bench of the Tribunal, was not tenable.That the fact that the assessee's appeal before the High Court for the assessment year 2005-06 was pending was no ground for the Tribunal not to decide the appeals for the assessment years 2007-08 and 2009-10 pending disposal before it or to keep them in abeyance. A court or Tribunal is not obliged to keep a matter in abeyance for the reason that one of the parties before it is in appeal on the same issue for another year or in another case. That in the earlier orders of the Tribunal there was no finding as to when the right to receive accrued to or vested in the assessee nor was there a reference to the terms of the contract. There had been no statement of the general principles of law nor of the issue or the legal problem arising and even the relevant facts material to the

decision were not as presented before the Tribunal on the earlier occasions, which orders were thus sub silentio the relevant aspects. Thus, its orders were distinguishable, and could not per se be regarded as binding precedents. There was no ratio decidendi for being followed. Under these circumstances the principle of res judicata was not applicable to the proceedings. *(*AY.2007-08, 2009-10)

A.K. Cold Storage Pvt. Ltd. v. ITO (2022)95 ITR 549 (Lucknow)(Trib)

S. 260A : Appeal-High Court-Territorial jurisdiction-The High Court having jurisdiction over the Assessing Officer who passed assessment order-Appeals against orders of Appellate Tribunal lie before High Court within whose jurisdiction assessing officer who passed assessment order situated. [116, 120, 124, 127, 252, 255, 260A, 269]

Dismissing the appeal of the Revenue the Court held that even if the case or cases of an assessee are transferred in exercise of power under Section 127 of the Act, the High Court within whose jurisdiction the assessing officer has passed the order, shall continue to exercise the jurisdiction of appeal. This principle is applicable even if the transfer is under Section 127 for the same assessment year(s). The order by which the appeal had been directed to be presented before the Gujarat High Court as the Assessing Officer who passed the order was located at Surat within the State of Gujarat, was unexceptionable. The order Followed ABC Papers Ltd; PCIT v. (2022)447 ITR 1 / 217 DTR 33/ 328 CTR 129 / 289 Taman 150(SC) (AY. 2001-02)

CIT v. Balak Capital Pvt. Ltd (2022) 449 ITR 394/ 220 DTR 303/ 2023) 330 CTR 111 (SC)

Editorial: Decision in CIT v. Balak Capital Pvt. Ltd (2017) 391 ITR 112 (P& H)(HC), affirmed.

S. 260A : Appeal-High Court-Territorial jurisdiction-Transfer of case-Power to transfer cases –-Consequent to transfer to another ITAT-The High Court having jurisdiction over the Assessing Officer who passed assessment order-Appeals against orders of Appellate Tribunal lie before High Court within whose jurisdiction assessing officer who passed assessment order situated. [116, 120, 124, 127, 252, 255, 260A, 269, ITATRules, 1963, R. 3, 4]

The Delhi High Court dismissed the appeal of the Revenue on the ground of lack of territorial jurisdiction of the Delhi High Court taking the view that when an order of transfer under section 127 of the Act was passed, the jurisdiction got transferred to the High Court within whose jurisdiction the situs of the transferee officer was located. On appeals to the Supreme Court against the orders of the Punjab and Haryana and Delhi High Courts held that the Punjab and Haryana High Court did not have jurisdiction and had rightly dismissed the appeal against the order of the Appellate Tribunal arising out of the order passed by the

Assessing Officer in Delhi, and the appropriate High Court for disposal of the appeal would be the Delhi High Court as the case was assessed by the Assessing Officer, Delhi. That the Punjab and Haryana High Court did not also have jurisdiction to entertain the appeal against the order of the Appellate Tribunal arising out of the order passed by the Assessing Officer at Ghaziabad, and the correct High Court to dispose of the appeal would be the Lucknow Bench of the Allahabad High Court. That against the decision of the Appellate Tribunal, New Delhi dated May 11, 2017, the Delhi High Court was the correct court to entertain and dispose of the appeal as per law. Court also observed that a judicial remedy must be effective, independent and at the same time certain. Certainty of forum would involve unequivocal vesting of jurisdiction to adjudicate and determine the dispute in a named forum.It is well-settled that the appellate jurisdiction of a High Court under section 260A of the Income-tax Act, 1961 is exercisable by a High Court within whose territorial jurisdiction the Assessing Officer is located.(AY.2008-09)

PCIT v. ABC Papers Ltd. (2022)447 ITR 1 / 217 DTR 33/ 328 CTR 129 / 289 Taman 150(SC)
PCIT v. Kuantum Papers Ltd (2022)447 ITR 1 / 217 DTR 33/ 328 CTR 129 / 289 Taman 150 (SC)
Editorial : Decision in PCIT v. ABC Papers Ltd (2019) 414 ITR 668 (P&H)(HC), affirmed.
S. 260A : Appeal-High Court-Limitation-Delay of 86 days-Delay was condoned-High Court directed to dispose of appeals on merits.
Allowing the appeal the Court held that the High Court ought to have condoned the delay of 86 days in preferring the appeals and ought not to have been too technical in dismissing the appeals on the ground of delay. The order of the High Court was unsustainable. [The delay of 86 days in filing the appeals was condoned and the High Court was to decide and dispose of the appeals in accordance with law and on the merits. It would be open for the assessee to submit before the High Court that it had settled the dispute under the Direct Taxes Vivad Se Vishwas Scheme and the High Court would consider the consequences of any settlement under the Scheme in accordance with law and on its own merits.

PCIT v. Suncity Projects Pvt. Ltd. (2022)448 ITR 717 /(2023) 290 Taxman 374 (SC)

S. 260A : Appeal-High Court-Not discussed on merits-Order of High Court set aside-Matter remanded [Benami Property Transaction Act, 1988, S, 49]

High Court except reproduction of observations made by Tribunal, there was no further independent reasoning given by High Court and nothing had been further discussed on merits and even substantial question of law had also not been framed, order of High Court under

section 260A was to be quashed and set aside and matter was to be remitted to High Court for adjudication afresh.

CIT v. State Bank of Bikaner and Jaipur (2022) 286 Taxman 569 (SC)

S. 260A : Appeal-High Court-Bad debt-High Court not admitting additional question on issue-Directed the High Court to decide the issue along with other questions.[S. 36(1)(vii)]

Allowing the appeal of the revenue the Court held that the question of law, whether the Appellate Tribunal was right in deleting the disallowance on account of bad debts written off amounting to Rs. 6,65,78,426 was to be dealt with and considered by the High Court along with the other questions of law in accordance with law and on its own merits.

PCIT v. Babubhai Ramanbhai Patel (2022) 444 ITR 165/ 288 Taxman 93 / 216 DTR 127/ 327 CTR 481 (SC)

S. 260A : Appeal-High Court-Substantial question of law-High Court-Dismissal of appeal non-speaking and non-reasoned order-Unsustainable-High Court to dispose of appeal afresh passing speaking and reasoned order.

Allowing the appeal the Court held that the order passed by the High Court dismissing the appeal was unsustainable and to be set aside. The High Court was to decide and dispose of the appeal afresh, in accordance with law and on its own merits, passing a speaking and reasoned order after recording the submissions made on behalf of the respective parties. If the High Court was of the opinion that the proposed questions were not substantial questions of law and were on factual aspects, it would be open to it to consider them in accordance with law.(AY. 2010-11)

PCIT v. Bajaj Herbals Pvt. Ltd. (2022)443 ITR 230 / 212 DTR 231/ 326 CTR 32/287 Taxman 163 (SC)

S. 260A : Appeal-High Court-Income from undisclosed sources-Share application money-High Court disposing of Department's appeals in one paragraph without discussion-Order set aside and matters remitted to High Court for consideration afresh on merits.[S. 56(1), 68]

Tribunal affirmed the order of Commissioner (Appeals) who has deleted the addition which was made under section 56(1) of the Act in respect of share application money received by the assessee. The High Court dismissed the Department's appeals holding that this was a case more of appreciation of facts rather question of law. On appeals, allowing the appeal, that the High Court was not justified in disposing of the appeals with a one paragraph order without discussing the issues which arose for consideration. Therefore, the order of the High Court was liable to be set aside and remitted to the High Court for fresh consideration on the merits.. (AY. 2012-13)

PCIT v. Motisons Entertainment India Pvt. Ltd. (2022)443 ITR 6/ 326 CTR 778 / 214 DTR 20 (SC)

PCIT v. Motisons Global Pvt. Ltd. (2022)443 ITR 6/ 326 CTR 778 / 214 DTR 20 (SC)

PCIT v. Godawari Estates Pvt. Ltd. (2022)443 ITR 6/ 326 CTR 778/ 214 DTR 20 (SC)

S. 260A : Appeal-High Court-Penalty-Monetary limits for appeals by Department Commissioner (Appeals) reducing penalty to sum below Rs. 20 Lakhs-Appeal to High Court maintainable. [S. 271(1)(c)]

Held that what was assailed by the Department was the penalty amounting to Rs. 29,02,743 and not the penalty as reduced by the Commissioner (Appeals). Before the Tribunal, both the Department, as well as the assessee, had preferred appeals and the entire penalty amounting to Rs. 29,02,743 was in issue before the Tribunal as well as before the High Court. The subsequent reduction in penalty in view of the subsequent order could not oust the jurisdiction. What was required to be considered was what was under challenge before the Tribunal as well as the High Court. Therefore, it could not be said that the appeal before the High Court at the instance of the Department challenging the order passed by the Tribunal was not maintainable in view of the circular dated December 10, 2015. CBDT Circular No.21 of 2015 dated December 10, 2015 (2015) 379 ITR 107 (St.) (AY. 1998-99)

Gyan Chand Jain v. CIT (2022)443 ITR 241 / 213 DTR 71/ 326 CTR 241 /287 Taxman 87 (SC)

S. 260A : Appeal-High Court-Ex-parte order on merits-Change of address-Gross negligent on the part of the appellant-One more opportunity is granted to the Appellant-Directed to pay cost of Rs. 25000.[S. 254(1)]

Against the ex-parte order the assessee filed an appeal. Court held that it was the duty of the Appellant to give changed address with the Tribunal. The Appellant did not give it's new address to the Tribunal and the notice was served to the Appellant on the address given by it. In fact, it was also the boundant duty of the Appellant to attend to the Appeal filed by it. Simply by filing the Appeal the duty of the Appellant does not come to an end, it has to attend the matter. Considering that in the absence of the Appellant the matter has been decided on merits and the Appeal involves the right of the Appellant the Court directed the appellant to pay cost of Rs, 25000 and directed the Tribunal to decide on merits.

Gopal Extrusions Pvt. Ltd. (Through its Director Sanjay Ramgopal Taparia) v. ITR (2022) 326 CTR 713/ 214 DTR 105 (Bom(HC)

S. 260A: Appeal-High Court-Territorial jurisdiction-Order passed by the Delhi Tribunal-Appeal filed in Calcutta High Court-Assessment files transferred from Delhi to Calcutta-Calcutta High Court has no jurisdiction-Appeals are rejected as not maintainable-Liberty granted to file the appeals before the appropriate High Court. [S. 127, 254(1), 256(1), 256(2), 269]

In this case, appeals were filed by the Revenue department before the Calcutta High Court under section 260A of the Act against the order passed by the Delhi Bench of the ITAT. The Respondent/Assessee objected to the maintainability of such appeals in response to which it was submitted that the PCIT while exercising his powers u/s 127 of the Act has transferred all the assessment files of the Respondent/Assessee from Delhi to Calcutta and that there was nothing available with the Income-tax officials at Delhi. The Court relied on the decision of CIT v. A.B.C. India Ltd.[2003] 126 Taxman 18 (Cal) (HC) wherein it has been held that the question of the cause of action would be irrelevant since the Court would be determining the question since determined by the Tribunal of another State which, according to law, is bound by the decision of the Supreme Court at the first place and then by the decision by the jurisdictional High Court. It further observed that in CIT v. J.L. Morrison (India) Ltd (2005) 272 ITR 321 (Cal) (HC)) it was held that if the High Court of Calcutta exercised jurisdiction over the order passed by the Tribunal located outside the jurisdiction of this Court, it would result in a judicial anomaly. In view thereof, it was held that these appeals were not maintainable. (date-13.12.2021)

PCIT v. Pavitra Trexim Pvt. Ltd.(2022) 216 DTR 225 / 327 CTR 797 (Cal) (HC)
PCIT v. Canton Vinimay (P) Ltd. (2022) 216 DTR 225 / 327 CTR 797 (Cal)(HC)
PCIT v. Sagar Fintrade (P) Ltd (2022) 216 DTR 225 /327 CTR 797 (Cal)(HC)

S. 260A : Appeal-High Court-Territorial Jurisdiction-Assessment was initiated at New Delhi and final assessment was framed by Assessing Officer at Ghaziabad-High Court of Punjab and Haryana lacked jurisdiction to adjudicate matter.

Held that where assessment was initiated at New Delhi and final assessment was framed by Assessing Officer at Ghaziabad, High Court of Punjab and Haryana lacked jurisdiction to adjudicate matter. Refer PCIT v. ABC Papers Ltd (ITA No. 130 of 2018.

PCIT v. ABC Papers Ltd v. ABC Papers Ltd (2022) 139 taxmann.com 312 (P& H)(HC)
Editorial: SLP granted to Revenue, PCIT v. ABC Papers Ltd. (2022) 287 Taxman 393 / 114 CCH 322 (SC)

S. 260A : Appeal-High Court-Territorial jurisdiction-Registered Office at Bangalore-Appeal filed at Delhi is not maintainable-Liberty is given to file appeal having jurisdiction.

The registered office of the assessee was in Noida and the assessment order, remand report and order in appeal were passed by the Assessing Officer and Commissioner (Appeals) based in Noida. After amalgamation, the assessee's registered office was situated in Bangalore. On appeal by the Principal Commissioner of Bangalore to the Delhi High Court the court dismissed the appeal filed against the order of the Tribunal for the AY 2010-11 on the ground of lack of territorial jurisdiction. Liberty was given to the Principal Commissioner to file the appeal to the court having jurisdiction with an application seeking condonation of delay, if any, to be considered on its own merits. Referred Dy.CIT v. Phonix Lamps Ltd (2020) 79 ITR 276 (Delhi)(Trib)) (AY. 2010-11)

PCIT v. Phoenix Lamps Ltd. (No. 1) (2022) 446 ITR 415 (Delhi)(HC)

PCIT v. Phoenix Lamps Ltd. (No. 2) (2022)446 ITR 417 (Delhi)(HC)

S. 260A : Appeal-High Court-Condonation of delay-Substantial justice-Every single day's delay must be explained does not mean that a pedantic approach should be made. When substantial justice and technical consideration are pitted against each other, cause of substantial justice deserves to be preferred. [S. 254(1), Limitation Act, S. 5, Direct Tax Vivad Se Vishwas Act, 2020, S. 3]

The appeals filed by the Revenue were delayed and hence application for condonation of delay was also filed. The Revenue submitted that the cases in hand expose a large financial scam which is not only confined to Kolkata but is spread over throughout the country concerning penny stock companies. Since in most of the matters the tax effect was less than the threshold as prescribed, the Revenue initially did not file appeals before the Court. However, on account of a subsequent clarification issued by the CBDT that appeals concerning penny stock matters can be filed irrespective of the tax effect involved, the Revenue filed appeals to the Court. The object underlying such decision cannot be ignored as it is represented that investigation reveal large scale financial scam throughout the country. If such is a fact of situation then the Court cannot be put under shackles on the technical grounds. Thus, on the assessee contemplating of going under the VsV Act cannot be said to have suffered prejudiced only because the Revenue has preferred the appeal belatedly and hence the applications filed before the Court for condonation of delay were allowed and delay in filing the appeals was condoned.

PCIT v. Dinesh Kumar Bansal (HUF) (2022) 214 DTR 11 (Cal (HC)

S. 260A : Decision of Court-High Court-Delay of 535 days-Condonation of delay was allowed.

There was delay of 535 days in filing appeal by revenue against an order passed by Tribunal. Condoning the delay the Court held that since delay had occasioned after application for condonation of delay was approved and returned to Ministry of Law and Justice on 16-3-2020 and fact that from 15-3-2020 onwards country was under lock down could not be lost sight, from 15-3-2020 period of limitation stood excluded and, condonation of delay was allowed. to be allowed. (AY. 2009-10)

PCIT v. Kalinga Metalics Ltd.(2022) 288 Taxman 688 (Cal)(HC)

S. 260A : Appeal-High Court-Delay of 545 days-Administrative exigency-Delay was condoned.

Revenue filed an application seeking condonation of delay of 545 days in filing appeal within period of limitation. High court observed that despite delay, there still appeared to have been certain administrative exigency on account of which revenue could not process papers on record and also since there were a bunch of cases involved in this matter, there would have been a situation where voluminous documents had to be perused before appeal was settled. Accordingly petition for condonation of delay was allowed.
Inland World Logistics (P) Ltd. v. Pr. CIT (2022) 139 taxmann.com 314(Cal)(HC)
Editorial : SLP of assessee dismissed, Inland World Logistics (P) Ltd. v. Pr. CIT (2022) 287 Taxman 377/114 CCH 59 (SC)

S. 260A : Appeal-High Court-Delay of 174 days-Delay was condoned.

Held that where delay of 174 days in filing of appeal could not be stated to be deliberate on part of revenue nor could it be construed that there was any mala fide intention on part of authorities in not lodging appeal within period of limitation, such delay was to be condoned
PCIT v.Ratan Kumar Somani (2022) 139 taxmann.com 37 (Cal)(HC)
Editorial: SLP of assessee dismissed, Ratan Kumar Somani v. PrCIT (2022) 287 Taxman 294 /114 CCH 61 (SC)

S. 260A : Appeal-High Court-Business expenditure-Order of Tribunal deleting disallowances based on appreciation of facts-Cannot be disturbed unless order is illegal or perverse.[S. 254(1)]
Dismissing the appeal of the Revenue the Court held that the Tribunal had considered all the issues in depth. The findings given by the Tribunal were based on appreciation of facts. The issues raised by the Department did not involve any substantial question of law and need not be interfered with in appeal under section 260A. The Tribunal had given separate findings on all the issues for all the three assessment years 2007-08, 2008-09 and 2009-10 and there was no perversity in its orders passed under section 254. No question of law arose.(AY.2007-08 to 2009-10)

PCIT v. Gahoi Buildwell (P.) Ltd. (2022)447 ITR 315 (Delhi)(HC)

S. 260A : Appeal-High Court-Additional ground-Revision order was passed in the name of dead person-Matter remanded.[S. 263]

The Revision order was passed in the name of dead person, however the issue was not raised before the Appellate Tribunal. High Court admitted the additional grounds and remanded the matter to the Tribunal for a fresh consideration.(ITA No. 517 of 2018 dt.16-9-2022 (AY. 1996-97)

Bimal v.Pala(Legal heir of Late Smt. Ranjana Paala) v. ACIT (2022) BCAJ-October-P. 69 (Bom)(HC)

S. 260A: Appeal-High Court-Interest on borrowed capital-Travel expenses-Question of fact-Order of Tribunal affirmed [S. 36(1))(iii)), 37(1)]

Held dismissing the appeal of the Revenue it was held that the court would not interfere with the concurrent finding of facts arrived at by the Commissioner (Appeals) and the Tribunal by reappreciating the evidence. The order of the Tribunal did not call for interference as there was no perversity. No questions of law arose.(AY. 2009-10)

PCIT v. Utech Developers Ltd. (2022)446 ITR 198/ 289 Taxman 259 (Delhi)(HC)

S. 260A : Appeal-High Court-Delay in disposal of appeals-Change in Panel counsels-CIT(judicial) to make necessary arrangements in two weeks.

Where on account of change of panel counsels there are adjournment requests on behalf of the Revenue to take instructions and file Vakalatnamas; resulting in delay in disposal of appeals. The Department is directed to take a review of all such matters and make alternative arrangements in advance. Further, CIT(Judicial) to take necessary steps and complete the exercise within two weeks starting June 15, 2022. (ITXA No. 267 of 2018 dated June 15, 2022

PCIT v. Emarsso Exports Private Limited (Bom)(HC) www.itatonline.org

S. 260A : Appeal-High Court-Observation that certain grounds are not pressed-Directed to file rectification application before the Income-tax Appellate Tribunal [S. 254(1), 254(2)]

On appeal the assessee contended that the Tribunal had considered certain grounds raised by the assessee in its appeal, the Tribunal in its order had observed that "the remaining grounds were not pressed by the assessee".
The court directed the assessee to approach the Tribunal with an application to seek correction of the observation made by the Tribunal in its order under section 254 (2) of the Act.

Betoking Ltd. v CIT (IT) (2022) 441 ITR 46 (Delhi) (HC)

S. 260A : Appeal-High Court-Review-Deemed dividend-Matter pending before larger Bench of Supreme Court-Order restored to extent of issue pending before larger Bench [S. 2(22)(e)]

Court allowed the application in view of a similar issue pending before larger Bench of the Supreme Court and on the ground that observations made in the order to the effect that the assessee had not made any payment by way of advance or loan to a share holder, but on the contrary, had received loans from the shareholders Akik Tiles Ltd and Marbolite Granito India and hence, the provisions of section 2(22)(e) would not apply since the assessee was the recipient of such amount appeared to be erroneous. The order was recalled and restored to the extent of the question on the issue of addition made under section 2 (22)(e) of the Act.

PCIT v. Gladder Ceramics Ltd (2022) 440 ITR 459 (Guj) (HC)

S. 260A : Appeal-High Court-Territorial jurisdiction-Binding precedent-Jurisdictional High court or Tribunal-Lower authorities are bound to follow the judgement, even if revenue had challenged previous order of jurisdictional High Court and matter was pending before Supreme Court.[S. 250, 254(1)]

Held that where issue involved in relevant assessment year was squarely covered in favour of assessee by Jurisdictional High Court and Tribunal in assessee's own case for earlier assessment years, in such case judicial discipline was to be followed by Assessing Officer and Commissioner (Appeals) even if revenue had challenged previous order of jurisdictional High Court and matter was pending before Supreme Court. (AY. 2013-14, 2014-15)
Sheraton International, LLC. v JCIT(IT) (2022) 197 ITD 351 (Delhi) (Trib.)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-High Court remanded the matter to Assessing Officer for consideration of claim-On SLP court held that the Assessing Officer to consider all pleas of assessee including consequences of retrospective amendment irrespective of observations of High Court or Tribunal. [S. 11, 12AA, 13(8), 80IB(10), 254(1)]
On appeal against the order of the High Court holding that the Tribunal, after setting aside the order under section 263 of the Act with reference to section 13(8) of the Act, could not thereafter have proceeded to examine the matter on the merits as the merits of the matter were not the subject matter of the appeal before the Tribunal, and quashed the order of the Tribunal and the direction of the Director (E) to the Assessing Officer to disallow the deduction under section 80-IB(10). On SLP the Court held that the observations made by the High Court, the consequences of the retrospective amendment in section 13(8) may not be considered by the Assessing Officer. It shall be open for the Assessing Officer to consider all

the pleas of the assessee including the consequences of the retrospective amendment in accordance with law irrespective of the observations made by the High Court or the Tribunal.(AY.2009-10)

India Heritage Foundation v. DIT (E) (2022)449 ITR 154 / 219 DTR 1/ 329 CTR 225 (SC)
Editorial: DIT(E) v. India Heritage Foundation (2020) 428 ITR 299 (Karn)(HC)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-capital or revenue receipt-Subsidy-Order of the Assessing Officer accepting the receipt as capital receipt was ex facie erroneous and potentially prejudice to revenue-Order of the High Court remanding the matter to the Assessing Officer was affirmed [S. 4]

The assessee has shown the subsidy as capital receipt in the return of Income. The Assessing Officer accepted the claim of the assessee without examining the subsidy scheme. Commissioner passed the revision order after examining the scheme and the order was set aside for re adjudication. On appeal the Tribunal quashed the order of the Commissioner on the ground that subsidy being capital in nature, revision was bad in law. On appeal the High Court PCIT v. L.G. Electronics India (P) Ltd (2022) 134 taxmann.com 329 (Delhi)(HC), set aside the order of the Tribunal and held that the AO's decision accepting the assessee's returns on the point upon the assessee's explanation without recording any reason, given the complex nature of subsidy, was ex facie erroneous. The High Court directed the Assessing Officer to pass a fresh order upon his independent analysis as to whether the amount received by way of subsidy is capital or revenue nature. On appeal SLP filed by the assessee was dismissed and the order of High Court is affirmed.(AY. 2008-09)

L.G.Electronics India (P) Ltd v.PCIT (2022) 134 taxmann.com 330 (SC)

Editorial : Oder of Tribunal in L.G. Electronics India (P) Ltd v. ACIT (2017) 83 taxmann.com 179/ 187 TTJ 470 (Delhi)(Trib), set aside.

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Commissioner cannot travel beyond the show cause notice-Order of Tribunal is affirmed [S. 260A]

Dismissing the appeal of the revenue the Court held that Commissioner cannot travel beyond the show cause notice.Order of Tribunal is affirmed. Followed Commissioner of Customs v. Toyo Engg. India Ltd (2006) 7 SCC 592/ CIT v. Contimeters Electricals (P) Ltd (2009) 317 ITR 249 (Delhi)(HC) (AY. 2009-10)

PCIT v. Bravo Sponage Iron (P) Ltd (2022) 212 DTR 291/ 326 CTR 85 (Cal)(HC)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Accomodation entries-Information from Maharashtra Sales tax Department-Order passed without making any inquiry or verification-Bogus purchase bills-Offered 2% of bogus purchases-Revision to assess the entire purchases as disallowable is held to be justified-Order of Tribunal set aside.[S. 69C, 260A]

Assessment of the assessee was completed. Subsequently, an information was received from Investigating officer that it was found from details that name of assessee was found in list of beneficiaries of accommodation entries by way of bogus purchases bills. On basis of same, a reopening notice was issued upon assessee and, further, Assessing officer disallowed 3 per cent of such bogus expenditure/purchases. Subsequently, PCIT invoked revision on ground that once it was established that expenditure was unexplained/bogus, entire amount of bogus expenditure was to be added to income of assessee. When Assessing Officer gave an opportunity to assessee to explain transaction, assessee did not produce any document but rather stated that 2 per cent of purported bogus purchase might be added to its income. The assessment was completed by making addition of 2% of bogus purcahses. Commissioner passed the Revision order and held that the Assessing Officer passed the order without making any inquiry or verification then it would be a case where the order is deemed to be erroneous in sofar as it is prejudicial to the interest of Revenue. Accordingly the PCIT held that entire expenses has to be disallowed as being bogus purcahses. The Assessing Officer was directed to reassess the income. On appeal the Tribunal quashed the Revision order. On appeal by the Revenue the Court held that the assessee had accepted allegations against it. Since it was established that expenditure was unexplained/bogus, entire amount of bogus expenditure was to be added to income of assessee. Order of PCIT was affirmed and the order of Tribunal was set aside. (AY. 2009-10 to 2011-12)

PCIT v. Premlata Tekriwal (Mrs.) (2022) 289 Taxman 337/ 217 DTR 315/ 328 CTR 995 (Cal)(HC)
PCIT v. Binod Kunar Tekriwala (2022) 289 Taxman 337/ 217 DTR 315/ 328 CTR 995 (Cal)(HC)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Opportunity of being heard-Participated in subsequent proceedings-Writ petition against revision proceedings was held to be not maianytainable [S.143(3), 253, Art, 226]
Commissioner passed the revision order under section 263 of the Act. invoked provision of section 263 and passed a revisionary order. Assessee filed a writ petition challenging order passed under 263 on ground that said order was passed without affording him an opportunity of being heard. Dismissing the petition the Court held that after the revisionary order was passed, Assessing Officer had issued notices to assessee and assessee had participated in proceedings and subsequently an assessment order under section 143(3), read with sections 263 and 144B was passed.(AY. 2016-17)
Anuradha Wadhwa v. PCIT (2022) 142 taxmann.com 185 (All)(HC)

Editorial : SLP of assessee dismissed, Anuradha Wadhwa v. PCIT (2022) 289 Taxman 4 (SC)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Depreciation-Scientific research-Two views possible-Assessing Officer following the order of jurisdictional High Court-Order cannot be held to be erroneous.[S. 35(2)(iv)]

Assessee-trust claimed depreciation on account of assets used for scientific research. Assessing Officer allowed claim made by assessee.On revision Commissioner (E) held that when deduction under section 35(2)(iv) was allowed in respect of capital expenditure incurred on said assets used for scientific research, no depreciation was allowable under section 32 on same assets. Tribunal quashed the order of revision on the ground that when two views were possible and the Assessing Officer had accepted assessee's claim for depreciation by placing reliance on the jurisdiction High Court order of the Assessessing Officer cannot be held to be erroneous. On appeal by Revenue High Court affirmed the order of the Tribunal. (AY. 2012-13)

CIT v. Integrated Education and Research Centre For Engineering and Management. (2022) 289 Taxman 234 (Cal)(HC)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Valuation of shares-Conducting enquiry and not recording satisfaction for accepting the claim-Satisfaction of an administrative or a quasi-authority should be manifest and vivid on the face of the order or proceedings. There can be no inference as regards satisfaction, nor can the provision of law be read in to connote deemed satisfaction-Order of revision is valid [S. 56(2)(viib), R. 11UA]

Allowing the appeal of the Revenue the Court held that the assessee had substantiated the value based upon the chartered accountant's certificate and other documents which according to the assessee were placed before the Assessing Officer and also before the Tribunal. It was evidently clear that no satisfaction was recorded by the Assessing Officer in the assessment order dated March 28, 2016. Curiously enough after the Assessing Officer affixed his signature and seal, a note had been mentioned in the assessment order and the note was not for the assessee. Even assuming the note could be referred to by the assessee, the note did not record any satisfaction as required under section 56(2)(viib). The Tribunal committed a serious error in reversing the order passed by the Principal Commissioner. The order of revision setting aside the assessment order was justified. Income-Tax authority should record satisfaction for either accepting or not accepting explanation. Satisfaction of an administrative or a quasi-authority should be manifest and vivid on the face of the order or proceedings. There can be no inference as regards satisfaction, nor can the provision of law be read in to connote deemed satisfaction.(AY.2013-14)

PCIT v. Trimex Fiscal Services Pvt. Ltd. (2022)449 ITR 407 (Cal)(HC)

Editorial : SLP of the assessee dismissed Trimex Fiscal Services Pvt. Ltd v. PCIT (2022) 449 ITR 4 (SC)(St)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Interest expenditure-One Time Settlement ('OTS')-Write off of interest receivable-Order was passed after making enquiry-Prior to the insertion of Explanation 2-Order of Tribunal quashing the revision order was affirmed.[S. 36(1)(iii), 36(1)(vii), 143((3), 260A]

Dismissing the appeal of the Revenue the Court held that once the Assessing Officer has raised queries which the assessee may not have answered fully then to say that this is a case of no enquiry cannot be permitted. What Section 263 covered prior to insertion of Explanation 2 was a case of no enquiry but not a case of inadequate enquiry. Prior to the insertion of Explanation 2, it was the prerogative of the Assessing Officer to determine what enquiry he wants to make while completing the assessment. Accordingly the CIT could not invoke jurisdiction under Section 263 as the view taken by the Assessing Officer was a possible/plausible view. It was only if the Assessing Officer had not made any enquiry then it could be said that the order passed was erroneous. This is not a case of lack of enquiry though it may be a case of inadequate enquiry. Inadequacy of enquiry as elucidated above does not give jurisdiction to the CIT to invoke provisions of Section 263 prior to the insertion of Explanation 2. Accordingly the order of Tribunal was affirmed (AY. 2006-07)

PCIT v. Shivshahi Punarvasan Prakalp Ltd (2022) 220 DTR 305 (Bom)(HC)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Interest expenditure-One Time Settlement ('OTS')-Write off of interest receivable-Order was passed after making enquiry-Prior to the insertion of Explanation 2-Order of Tribunal quashing the revision order was affirmed.[S. 36(1)(iii), 36(1)(vii), 143((3), 260A]

Dismissing the appeal of the Revenue the Court held that once the Assessing Officer has raised queries which the assessee may not have answered fully then to say that this is a case of no enquiry cannot be permitted. What Section 263 covered prior to insertion of Explanation 2 was a case of no enquiry but not a case of inadequate enquiry. Prior to the insertion of Explanation 2, it was the prerogative of the Assessing Officer to determine what enquiry he wants to make while completing the assessment. Accordingly the CIT could not invoke jurisdiction under Section 263 as the view taken by the Assessing Officer was a possible/plausible view. It was only if the Assessing Officer had not made any enquiry then it could be said that the order passed was erroneous. This is not a case of lack of enquiry though it may be a case of inadequate enquiry. Inadequacy of enquiry as elucidated above does not give jurisdiction to the CIT to invoke provisions of Section 263 prior to the insertion of Explanation 2. Accordingly the order of Tribunal was affirmed (AY. 2006-07)

PCIT v. Shivshahi Punarvasan Prakalp Ltd (2022) 220 DTR 305 (Bom)(HC)

S. 263: Commissioner-Revision of orders prejudicial to revenue-Excess depreciation-Subsidy-Revision is held to be not valid-Order of Tribunal affirmed.[S.32, 43(1), 260A]

Revision order was quashed by the Tribunal on the ground that the CIT has contradicted himself in his order. On appeal by the Revenue dismissing the appeal the Court held that ITAT has rightly concluded that it cannot be found anywhere as to how CIT arrived at the figure of excess depreciation of Rs.41,19,74,440/-in the initial part of his order. Moreover, CIT has also asked the Assessing Officer to examine the details and compute the admissible depreciation. No substantial question of law arises.(WP No. 276 of 2018, dt. 19-4-22)

PCIT v. Maharashtra State Electricity Distribution, (Bom.)(HC) (UR)

S.263 : Commissioner-Revision of orders prejudicial to revenue-Failure to verify fall in gross profit-Revision of order is not valid-Order of Tribunal is affirmed.[S. 260A]

The AO had raised queries on the drop of gross profit and the assessee had submitted requisite information/details along with explanation. The AO accepted the explanation being satisfied with the explanation. Tribunal held that such a decision cannot be held to be erroneous simply because in his assessment order the AO did not make any elaborate discussion in that regard. Moreover, the Commissioner himself, even after initiating proceedings in revision and hearing the assessee, has simply said submissions made by the assessee are considered but the same is not acceptable. The Commissioner has not given any detailed explanation why the explanation of the assessee was not acceptable. Without coming to such conclusion or discussing why assessee's explanation was not acceptable, the Commissioner cannot simply ask the AO to conduct enquiries/fresh determination. On appeal by the Revenue the Court held that Tribunal has not committed any perversity or applied incorrect principles to the given facts and when the facts and circumstances are properly analysed and correct test is applied to decide the issue at hand. Order of Tribunal is affirmed.(ITA No. 1838/2017 dt 3-3 2022).

PCIT v. Rajhans Metal Pvt. Ltd (Bom)(HC)(UR)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Issue not referred in the notice of revision-Order of revision on such issue-Not valid. [S. 40A(2)(b)]

Held, dismissing the appeal of the Revenue that there was a finding by the Tribunal, that no issue was raised by the Commissioner in respect of particulars of payment made to persons specified under section 40A(2)(b) of the Act and even the show-cause notice was silent about that. The assessment order could not be set aside on the ground that payments made to persons specified under section 40A(2)(b) of the Act of Rs. 7,00,22,680 had been erroneously allowed in the assessment order.(AY. 2009-10)

PCIT v. Universal Music India Pvt. Ltd. (2022)446 ITR 287 (Bom)(HC)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Agricultural land-Capital asset-land sold by assessee was situated beyond 8 kms from local limits of any municipality or cantonment board-Not capital asset-Revision order is not valid [S. 2(IA), 2(14) (iii), 143(3)]

-Assessing Officer accepted the land sold is agricultural land hence not liable to tax. PCIT passed the revision order on ground that Assessing Officer had failed to examine genuineness of such transaction of transfer of land by assessee in course of assessment which rendered said assessment order erroneous and prejudicial to interest of assessee. On appeal the Tribunal held that land sold by assessee was situated beyond 8 kms from local limits of any municipality or cantonment board as referred in proviso to section 2(1A) and section 2(14) and, thus, certainly it would not fall within definition of capital asset and, accordingly, question of any capital gain would not arise on sale of said agricultural land. During original assessment, Assessing Officer had raised various queries with regard to claim of capital gain on transfer of land by assessee who had furnished details in respect to distance of agricultural land from municipal limits, record of population as per last census and only after considering said material on record, Assessing Officer had accepted claim of assessee. Since the Assessing Officer had passed assessment order after making necessary inquiries order is not prejudicial to the interest of revenue.(AY. 2011
-12)
CIT v. Chandan Magraj Parmar (2022) 445 ITR 674/ 285 Taxman 565 (Bom)(HC)

S. 263: Commissioner-Revision of orders prejudicial to revenue-Payment to specified persons-Revision proceedings cannot travel beyond the reasons given in show cause notice-0rder of Tribunal is affirmed [S. 40A(2)(b)]

Dismissing the appeal of the revenue, the Court held that, where the show cause notice under section 263 of the Act suggested only 2 issues but the order under section 263 of the Act directed the ld. AO to make enquiry and examine the two issues and a third issue, the Tribunal held that the third issue cannot form the basis for revision of assessment order under Section 263 of the Act. Order of the Tribunal upheld. (AY. 2009-10) (ITA No. 238 of 2018 dated April 19, 2022)

PCIT v. Universal Music India Pvt. Ltd. (Bom)(HC) www.itatonline.org

Editorial: CIT v. Amitabh Bacchan (2016) 384 ITR 200/ (69) taxmann.com 170 (SC) distinguished.

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Exempt income-Strategic investment-View taken by Assessing Officer being a possible view could not have been interfered by Commissioner-Order of Tribunal quashing the revision was affirmed [S. 14A, R. 8D, 260A]

Commissioner passed the revision order with directions to frame a fresh assessment order on ground that Assessing Officer failed to make a disallowance of interest under provisions of section 14A read with rule 8D and therefore order of Assessing Officer was erroneous and prejudicial to interest of revenue. Tribunal set aside order of Commissioner. On appeal the Court held that Commissioner had not disputed nature of investments being strategic investment made for purpose and in course of business of assessee and had only looked at matter from a different legal view on same set of facts therefore, view taken by Assessing Officer being a possible view could not have been interfered by Commissioner under section 263 of the Act. Order of Tribunal is affirmed. (AY. 2011-12)

CIT v. Future Corporate Resources Ltd. (2022) 284 Taxman 122 (Bom.)(HC)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Deduction of tax at source-Contractors/sub-contractor-Cash payment-Survey-Tribunal was justified in quashing revisionary proceedings on ground that order passed by AO was neither erroneous nor prejudicial to interest of revenue. [S.40(a))(ia), 40A(3), 194C, R.6DD]

Assessee is engaged in business of manufacturing of dairy products. PCIT passed revision order and remanded the matter on the ground that the assessee paid cash who was claimed to be assessee's employee. During survey, it was admitted by assessee that he was contractor hence disallowable u/s 40A(3) of the Act. On appeal the Tribunal held that during assessment proceedings, assessee submitted cash payment register and explained each item of proposed addition as per show cause notice issued by Assessing Officer and Assessing Officer after going through cash payment register and explanation of each item, did not make addition. Tribunal quashed revisionary proceedings on ground that order passed by Assessing Officer was neither erroneous nor prejudicial to interest of revenue. On appeal by Revenue High Court affirmed the order of the Tribunal.(AY. 2013-14)

PCIT v. Shukla Dairy (P) Ltd (2022) 288 Taxman 750 (Guj)(HC)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Appeal before Commissioner (Appeals)-Issue was not subject matter of appeal before Commissioner (Appeals) –Book profit-Revision is valid-Revisionary order passed by Commissioner under section 263 could not be said to be without jurisdiction merely because document identification number (DIN) of order was intimated one day after said order was passed. [S. 9(1)(vii), 115JB, 250, 263(1)(c), Art, 226]

During scrutiny, Assessing Officer held that services provided by petitioner were to be treated as consultancy services and would be taxable in India. Petitioner preferred an appeal before Commissioner (Appeals) against final assessment order. Subsequently, Commissioner invoked section 263 to revise assessment order on ground that Assessing Officer failed to note that since petitioner had a PE in India it could be taxed as per provisions of MAT under section 115JB. The petitioner challenged the revision order by filling the writ petition on the ground that order is without jurisdiction. Dismissing the petition the Court held that scope of appeal before Commissioner (Appeals) was confined to taxability of receipts towards services rendered by petitioner, thus, there was no embargo under section 263 for Commissioner to pass revisionary order as matter was not considered in appeal. Court also held thatrevisionary order could not be said to be without jurisdiction merely because document identification number (DIN) of order was intimated one day after said order was passed.(AY. 2015-16)(SJ)

Texmo Precision Castings UK Ltd v. CIT (IT) (2022) 288 Taxman 251 (Mad)(HC)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Pendency of appeal before Tribunal-Stay of proceedings-Assessing Authority could complete assessment proceedings pursuant to findings given by revisional authority-No notice of demand should be made by Assessing Authority pursuant to such order till said appeal before Tribunal was disposed off. [S.254(1) Art, 226]

Against the revision order the assessee preferred an appeal before the Tribunal which is pending for final disposal. The Assessing Officer issued notice to give effect to the order of the Commissioner. The assessee filed writ petition before the court seeking writ of mandamus for barring the respondents to proceed further pursuant of the order passed by the Commissioner. Court held that even if an appeal against revision order passed under section 263 was pending before Tribunal, Assessing Authority could proceed to complete assessment proceedings pursuant to findings given by revisional authority in such order passed under section 263, however, no notice of demand should be made by Assessing Authority pursuant to such order till said appeal before Tribunal was disposed off. (AY. 2016-17)(SJ)

VIP Housing and Properties v. ITAT(2022) 288 Taxman 296 /(2023) 452 ITR 306 (Mad)(HC)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Work in progress-Method of accounting-Valuation of stock-Merely to remand matter to AO to verify correctness of submission made by assessee that profit element was accounted for in its income was held to be not valid.[S. 145]

Assessing Officer examined valuation of closing work-in-progress (WIP) and passed assessment order. Commissioner remanded matter to Assessing Officer. Tribunal set aside said order on ground that there was no real finding by Commissioner to form opinion that assessment order was erroneous and it was simply invoked to verify correctness of submission made by assessee. On appeal the Court held that since basis for forming a view that profit element in WIP was not accounted for by assessee was absent in revisionary order of Commissioner. Order of Tribunal affirmed.(AY. 2009-10)

PCIT v. Orissa State Police Housing & Welfare Corporation Ltd. (2022) 287 Taxman 479/ 218 DTR 148 / 287 Taxman 479 / 114 CCH 317 (Orissa) (HC)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Pendency of appeal before ITAT-Assessing Officer can complete the assessment-No demand can be enforced till the appeal is decided by the Appellate Tribunal [S. 254(1) Art, 226]

On writ the Court held thateven if appeal against revision order was pending before Tribunal, assessing authority could complete assessment proceedings pursuant to findings given by revisional authority in order passed under section 263, however, assessing authority would not proceed further to make any demand pursuant to such order of assessment till said appeal before Tribunal was disposed off.Matter remanded. (SJ) (AY.2016-17)

Taqa Nevyeli Power Co. P. Ltd. v. ITAT (2022) 287 Taxman 113 /113 CCH 324 /(2023)452 ITR 302 (Mad.) (HC)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Disallowance of expenditure-Exempt income-Formula not applicable to AY. 2002-03-Revision is held to be not valid [S. 14A, R. 8D]

Dismissing the appeal of the Revenue the Court held that the Tribunal was right in holding that the disallowance made under section 14A was not applicable to the AY 2002-03 as it was brought into the statute book by the Finance Act, 2006 only with effect from April 1, 2007. The notice under section 148 was issued to the assessee on January 28, 2009, presumably taking note of the fact that the insertion of section 14A was made with retrospective effect from April 1, 1962. What was intended to be said by the Tribunal was that section 14A had been functionally made operative on introduction of rule 8D which was inserted by the Income-tax (Fifth Amendment) Rules, 2008 with effect from March 24, 2008 ([2008] 299 ITR (St.) 88) and therefore, section 14A read with rule 8D was not applicable to the AY 2002-03 and the finding rendered by the Tribunal set out the correct legal position. Order of Tribunal affirmed.(AY. 2002-03)

CIT v Accel Limited (2022)446 ITR 47 (Mad)(HC)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Abatement of proceedings-Settlement of Dispute-Revision proceedings initiated abate-Revision held to be not valid.[Direct Tax Vivad Se Vishwas Act, 2020, Art, 226]

Allowing the petition the Court held that the intention of Parliament in enacting the Direct Tax Vivad Se Vishwas Act, 2020, is to bring a closure to disputes in respect of tax arrears. Taxpayers whose appeals are pending at any level are entitled to avail of the benefit of the scheme. Once an assessee settles his or her case under the 2020 Act proceedings initiated against him or her under section 263 of the Income-tax Act, 1961, abate. Revision held to be not valid.(AY.2011-12)(SJ)

Gopalakrishnan Rajkumar v. PCIT (2022)445 ITR 577/ 214 DTR 235 (Mad)(HC)
Gopalakrishnan Ravim v. PCIT (2022)445 ITR 577 / 214 DTR 235 (Mad)(HC)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Share application money-Revision order is held to be valid [S. 68 69]

Dismissing the appeal the Court held that Revision order passed by the CIT setting aside assessment order with a direction for requisite inquiries doubting said share capital raised with such high premium. Referred Pragati Financial Management (P.) Ltd. v. CIT (2017) 394 ITR 27 (Cal)(HC) and held that even under non-amended provisions of section 68 prior to insertion of proviso to section 68, which was added by Finance Act, 2012, providing for enquiry of sum credited by assessee, an Income-tax Officer was not precluded from making an inquiry as to true nature and source of sum found credited in books even if same was credited as receipt of share application money. (AY. 2009-10)

Neelkantha Commosales (P.) Ltd. v. ITO (2022) 286 Taxman 48 (Cal)(HC)

S. 263 : Commissioner-Revision of orders prejudicial to revenue Deemed dividend-Loans and advances to shareholders-Unsecured loan from group company-Paid back with interest in same year-Revision is held to be not justified.[S. 263]

Assessee received unsecured loan from its group companies during relevant assessment year. The assessment was completed u/s 143(3) of the Act.Commissioner set aside assessment order by invoking section 263 on ground that section 2(22)(e) would be applicable on loan received by assessee as same were deemed dividend and directed Assessing Officer to re-compute assessee's income. Tribunal set aside the order on the ground that the assessee paid off loan with interest in same year itself. Furthermore, details of shareholders holding more than 10 per cent shares were provided by assessee-company during assessment proceedings and Assessing Officer after taking into consideration all relevant documents held that section 2(22)(e) would not be applicable in case of assessee. On appeal High Court affirmed the order of Tribunal. (AY. 2012-13)

PCIT v. Suprabha Industries Ltd. (2022 286 Taxman 156 / 211 DTR 157/ 325 CTR 757 (Cal)(HC)

S. 263 : Commissioner-Revision of orders prejudicial to revenue Provision for excise duty liability-Input tax credit in other units effectively amounting to constructive payment in next financial year-Revision is not valid. [S. 43B, 142(1)]

Dismissing the appeal of the revenue the Court held that the Tribunal had rightly taken note of the Central excise returns and found that one of the units of the assessee was engaged only in job-work activity and therefore not entitled for the benefit of input tax credit and after taking note of the sum paid on such account, the balance amount was adjusted with the available input tax credit in the respective divisions which amounted to actual payment of excise duty. In response to the notice under section 142(1) the assessee had furnished the calculation of valuation of closing stock and the relevant details. Thereafter, the Assessing Officer having been convinced on the assessee's working did not make any addition or disallowance under section 43B.Order of Tribunal is affirmed.(AY. 2012-13)

PCIT v. Beekay Steel Industries Ltd. (2022) 444 ITR 71 (Cal)(HC)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Deduction could not be denied on ground companies which used Railway Sidings were group companies-Revision is not valid. [S.. 80IA(4)(i)(b)]

The Principal Commissioner invoked his power under section 263 of the Income-tax Act, 1961 on the ground that the assessee had claimed deduction under section 80IA(4) for its railway sidings which was not admissible. The Tribunal held the revision not sustainable. On appeal the Court held that the Tribunal had rightly referred to the clauses in the agreement between the railways and the assessee and concluding that the railway administration had a right to use all the sidings which had been put up by the assessee. Therefore, the assessee fell within the ambit of sub-clause (b) of section 80IA(4)(i). The contention of the Department that the two companies which were permitted to use the railway sidings were closely held group companies of the assessee and therefore, could not be construed to be used by general public was rejected since such narrow interpretation of the agreement entered into between the assessee and the railways could not be given.(AY. 2009-10 to 2012-13)

PCIT v. Rashmi Metaliks Ltd. (2022) 444 ITR 75/ 215 DTR 260 / 327 CTR 328 (Cal)(HC)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Penalty-Concealment-Commissioner setting aside entire Assessment-Assessing Officer acting under such order of remand can initiate penalty proceedings. [S.143(3), 271 (1)(c) Art, 226]

Commissioner set aside the entire assessment. The Assessing Officer initiated penalty proceedings. The assessee filed writ petition to quash the penalty proceedings. Dismissing the petition the Court held that the Commissioner by an order under section 263 had set aside the assessment order in its entirety and remanded the case for fresh consideration by the Assessing Officer. Thus, while issuing the order of assessment, the Assessing Officer was bestowed with all powers as in an original assessment, including the power to express his satisfaction for initiating penalty proceedings. The penalty proceedings were valid.(AY. 2015-16) (SJ)

Mallelil Industries Pvt. Ltd. v. ITO (2022) 444 ITR 80/ 288 Taxman 303/ 213 DTR 387/ 326 CTR 625 (Ker)(HC)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Income Declaration Scheme, 2016-Declaration accepted and consequent assessment-Revision is not valid [Income Declaration Scheme, 2016]

Dismissing the appeal of the Revenue the Court held that the Principal Commissioner had invoked his power under section 263 in respect of an item of income which was declared in terms of the Scheme. All particulars were available before the Principal Commissioner in respect of such income and the Principal Commissioner upon being satisfied, had accepted such declaration. All materials were available before the Principal Commissioner when the declaration made under section 183 of the Finance Act, 2016 were considered and accepted.

Therefore, the assumption of jurisdiction by the Principal Commissioner under section 263 of the Act was wholly without jurisdiction. The Income Declaration Scheme, 2016 was introduced by Chapter IX of the Finance Act, 2016 (2016) 384 ITR 1 (St.) (AY. 2014-15)

PCIT v. Manju Osatwal (2022)443 ITR 107/ 211 DTR 216/ 325 CTR 450 (Cal) (HC)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Order passed after enquiry-Order not erroneous-Free trade zone-Not necessary to maintain separate books of accounting for export unit-Circular and instructions-Binding on Income-Tax Authorities [S. 10A, 119]

Allowing the appeal the Court held that the circulars and instructions of the Central Board of Direct Taxes are binding on the Department the conclusion of the Principal Commissioner that it was necessary to maintain separate books of account was not sustainable. The finding of the Principal Commissioner that the Assessing Officer had not made any enquiry was absolutely vague. It was clear from the assessment order under section 143(3) that the Assessing Officer did conduct an enquiry and call for details, that the details were produced and that thereafter, the assessment was completed. Therefore, the finding of the Principal Commissioner in that regard was erroneous, and consequently, assumption of jurisdiction under section 263 of the Act was not sustainable. The Tribunal while testing the correctness of the order passed by the Principal Commissioner had also not dealt with the issues, which were specifically pleaded by the assessee. Therefore, the order passed by the Tribunal was also erroneous. The order of revision was not valid. The Central Board of Direct Taxes by Circular No. 1 of 2013, dated January 17, 2013 ([2013] 350 ITR (St.) 34), (AY.2010-11)

Virtusa Consulting Services Pvt. Ltd. v. Dy CIT (2022)442 ITR 385 (Mad) (HC)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Subsidy-Capital or revenue receipt-Order of Tribunal set aside and the Assessing Officer is directed to pass a fresh order based upon his independent analysis whether the amount received by way of subsidy is a capital or revenue nature.[S. 4]

Allowing the appeal of the revenue the Court held that the ITAT has applied its own analysis and set aside the order of the PCIT. High Court set aside the order of the Tribunal and the Assessing Officer is directed to pass a fresh order based upon his independent analysis whether the amount received by way of subsidy is a capital or revenue nature.

PCIT v.LG Electronics India (P) Ltd (2022) 443 ITR 46/ 134 Taxman 329 (Delhi) (HC)

Editorial : SLP of the assessee is dismissed; LG Electronics India (P) Ltd v. PCIT (2022) 443 ITR 45/ 285 Taxman 88 / 212 DTR 81/325 CTR 704 (SC))

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Power to grant stay-Buy back of shares-Stay of further proceedings when appeal against the revision order is pending before the Appellate Tribunal-Revision order was stayed for twelve weeks [S. 253(7), 254(1), Art, 226,Companies Act, 1956, S.77A]

Against the revision order the petitioner filed an appeal before the Tribunal. The petitioner also filed writ with limited prayer for revisionary order to be kept in abeyance till Tribunal could give quietus to entire matter. Revenue contended that petitioner did not file a stay petition before Tribunal and thus, could not choose to seek said limited prayer. Whether as per section 253(7) Tribunal could stay revisional order or not, when there was no demand made by petitioner would become a matter of debate and in light of limited prayer sought was to be left open. Court held that all further proceeding pursuant to revisional order would remain stayed for a period of twelve weeks and it would be open for petitioner to move Tribunal for expeditious disposal of appeal**.**(AY. 2014-15)

Cognizant Technology Solutions India (P.) Ltd. v. ITAT (2022) 442 ITR 352/ 284 Taxman 382 (Mad.)(HC)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Export-Change in share holdings without beneficial interest-Reassessment proceedings initiated was dropped-No jurisdiction under section 263 to examine the correctness of decision by the Assessing Officer [10A(9), 147, 148]

Dismissing the appeal of the revenue the Court held that the issuance of notice under section 148 of the Act and dropping of the proceedings after verifying the details are not administrative decisions. The decision to be taken before issuance of notice for reopening should be based upon cogent reasons and the Assessing Officer who issues notice should record his satisfaction and this cannot be termed as purely an administrative decision but there is a quasi-judicial application of mind required before issuance of notice under section 148 of the Act. Court also affirmed the view of the Tribunal that the shares were transferred only to comply with the legal requirements and the beneficial ownership was never transferred.(AY.2001-02)

CIT v. Barry-Wehmiller International Resources (P.) Ltd. (2022) 440 ITR 403/ 211 DTR 127/ 325 CTR 643 (Mad)(HC)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Limitation-Reassessment-Period of limitation commences from date of original assessment and not from date of reassessment-Revision barred by limitation-Donation to corpus fund-Capital in nature [S. 11(1)(d), 11(5), 143(1),147, 148, 263 (2)]

Dismissing the appeal the Court held that period of limitation commences from date of original assessment and not from date of reassessment. Revision barred by limitation. Court

also held that the nature of receipt was building donation fund or corpus fund received by the assessee for the purpose of building fund. The Tribunal was right in holding that the contributions to the building fund were in the nature of corpus donations.(AY.2010-11)

CIT (E) v Choice Foundation (2022) 440 ITR 106/ 285 Taxman 48 (Ker) (HC)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Matter to be remanded to Commissioner where evidence was not considered by him-Monetary limits-Appeal was dismissed.[S. 80IB, 153A, 254(1), 260A]

Where the Commissioner revised an assessment and the Tribunal accepted the assessee's contention that the Commissioner had not examined the submissions and evidence, the Tribunal should have either examined the matter itself or remanded the matter back to the Commissioner. Since the Tribunal accepted the assessee's contentions without following either of the two options, the matter was to be remanded to the Commissioner to consider the issue afresh. Department appeals being below the threshold limit of tax effect, the appeals are dismissed.(AY. 2008-09,to 2011-12, 2013-14)

PCIT v. Shalimar Pellet Feeds Ltd. (2022) 440 ITR 530 / 216 DTR 211/ 328 CTR 840 (Cal) (HC)

S. 263 : Commissioner - Revision of orders prejudicial to revenue – Assessing Officer made complete enquiries- No adverse comments made by investigation department- Failure to bring evidence of cash deposited in account by Principal Commissioner- Proceedings without any merit- Revision order was quashed. [S. 147, 148]

Held, that the Principal Commissioner had failed to bring on record the material or evidence which showed that the assessee had deposited the cash in her bank account. The Principal Commissioner had failed to establish the fulfilment of twin conditions before invoking the jurisdiction under section 263 of the Act and failed to bring on record how the order passed by the Assessing Officer was prejudicial to the interests of the Revenue and further how it was erroneous. Hence, the action initiated under section 263 was without any merit and it was quashed. (AY. 2011-12).

Ravinder Bawa (Smt.) v. ITO (2022) 98 ITR 149 (Amritsar) (Trib)

S. 263 : Commissioner - Revision of orders prejudicial to revenue - Depreciation – Amalgamation of companies- Accounting Standard 14 — Excess consideration paid over and above net asset value of amalgamating Company - Goodwill- Revision was quashed . [S. 32(1)]

Allowing the appeal of the assessee the Tribunal held that the assessee has rightly claimed the depreciation on excess consideration paid over and above net asset value of Amalgamating company is good will and can be amortised in the books of account of the amalgamated company .Depreciation was rightly allowed by the Assessing Officer . Revision order was quashed . (AY. 2015 -16)

Trivitron Healthcare P. Ltd. v .PCIT (2022)98 ITR 105 (Chennai) (Trib)

S. 263 : Commissioner - Revision of orders prejudicial to revenue - Limited Scrutiny for verification of cash deposits - Assessing Officer has not made proper verification – Revision is held to be justified . [S. 143(3)]

Held that the source of cash deposits from the "safe custody account" was not questioned by the Assessing Officer by calling for ledger accounts etc., nor had the assessee submitted any details in this regard during the assessment proceedings. Revision order is held to be justified . (AY. 2017-18)

Asha Devi v. PCIT (2022) 98 ITR 52 (SN)(Bang) (Trib)

S. 263 : Commissioner - Revision of orders prejudicial to revenue - Industrial undertaking — Generation of power — Windmill Assessing Officer applied his mind - Revision on the ground Assessing Officer did not examine whether separate books maintained — Not sustainable merely because Commissioner has different opinion — Revision is not valid . [. 80IA(4)(iv), 80IA(7)]

Held that the Assessing Officer had raised a specific query with regard to the deduction claimed under section 80IA of the Act and the assessee had furnished the required details before the Assessing Officer. The assessee had furnished the audit report in form 10CCB before the Assessing Officer, which was the mandatory requirement under section 80IA(7) of the Act. The Assessing Officer had allowed the claim of the assessee after calling for necessary details, meaning thereby, he had allowed the claim of the assessee after due application of his mind. The view taken by him was a possible view on this issue. Revision is held to be not justified (AY.2017-18)

Asian Star Co. Ltd. v. PCIT (2022) 98 ITR 56 (SN) (Mum) (Trib)

S. 263 : Commissioner - Revision of orders prejudicial to revenue - Demonetisation period – Cash deposits - Duty of the Assessing Officer to carry out investigation — Revision is proper . [S. 143(3) , 263 , Explanation 2]

Held that the Assessing Officer had not examined any details regarding cash deposits during the demonetisation period. He had simply accepted the entire turnover and applied the net profit rate for completion of assessment. The Assessing Officer is an investigating officer thereafter he is an adjudicating officer. He must carry out investigation on the facts of the case and also decide the matter judiciously on the materials available with him and has also those produced before him and he may call for further information. He should be fair not only to the assessee but also to the public exchequer. It is the duty of the Assessing Officer to ascertain the number of facts stated and genuineness of the transactions done when the circumstances of the case are such as to provide enquiry. The Assessing Officer should have enquired in depth to the sales and purchases and also cash deposits made during the demonetisation period. The Assessing Officer had not done assessment in accordance with section 263 of the Income-tax Act, 1961 read with Explanation 2 thereto. Revision was up held . (AY. 2017-18)

Baidoddi Eshappa v. PCIT (2022) 98 ITR 78 (SN)(Bang) (Trib)

S. 263 : Commissioner - Revision of orders prejudicial to revenue -
Purchase of property-Not pointing out error in order passed by Assessing Officer and how it was prejudicial to Revenue —Revision order was quashed .[S. 56(2)(vii)(b)]

Held that the Principal Commissioner had not pointed out what was the error in the reassessment order passed by the Assessing Officer and how it was prejudicial to the interests of the Revenue whereas the Principal Commissioner in his conclusion, accepted the submission of the assessee, cancellation of sale deed, etc., stated that these required further examination and verification. This could not be a ground to invoke revision proceedings under section 263 of the Act. Revision order was quashed . (AY. 2011-12)

Bimal Keshavlal Patel v. PCIT (2022) 98 ITR 19 (SN)(Ahd) (Trib)

S. 263 : Commissioner - Revision of orders prejudicial to revenue -Development expenses – Neither filed any written submission nor appeared before the Tribunal – Revision is justified .

Held that The Principal Commissioner had given sufficient and adequate opportunities before passing his revisional assessment order. The assessee failed to provide without details of development expenses, unsecured loan and the advances despite repeated notices and reminders. In the absence of any details sought by the Principal Commissioner, the order of the Assessing Officer was revised by the Principal Commissioner. The representative had not appeared before the Tribunal despite service of notice nor filed any written submission. Therefore, in the absence of any detailed requirement in support of the various grounds of appeal raised by the assessee, the finding of the Principal Commissioner was to be confirmed.(AY. 2013-14)

Gujarat Infrastructure Co. v. PCIT (2022) 98 ITR 92(SN)(Surat) (Trib)

S. 263 : Commissioner - Revision of orders prejudicial to revenue -Reassessment order - Issue on which revision order was passed was neither subject matter of reassessment nor coming to notice during reassessment proceedings —Order is not erroneous. [S. 143(3) , 147 , 148]

Held that the jurisdiction of the Assessing Officer is confined to assessing issues on which he has reason to believe that income has escaped assessment and it is only if during the course of assessing these incomes that he is made aware of any other income escaping assessment that he can assess the other such income also. The issue raised by the Principal Commissioner being not the subject matter of reassessment nor having come to the notice of the Assessing Officer during the reassessment proceedings, the Assessing Officer could not have considered this issue in the reassessment proceedings. Therefore the assessment order passed under section 147 of the Act could not be said to be erroneous on the ground of the Assessing Officer not having examined an issue which clearly was beyond his powers. The order passed under section 263 of the Act was accordingly not sustainable in law.(AY. 2012-13)

Hemang Chimanbhai Pokal v. PCIT (2022) 98 ITR 81 (SN)(Ahd) (Trib)

S. 263 : Commissioner - Revision of orders prejudicial to revenue -Provisions made under various heads – Assessing Officer has not examined the details – Revision is valid – Benefit of Circular – Eligible deduction . [S.80P]

Held thatthe Assessing Officer had not dealt with the issues nor examined them while passing the assessment order. Revision is valid . The assesseee is eligible for deduction under section 80P on the profit from business and the benefit of Circular No. 37 of 2016, dated November 2, 2016 .(AY. 2016-17)

Jaladurga Vss Sangha Tellaru v. PCIT (2022) 98 ITR 40 (SN)(Bang) (Trib)

S. 263 : Commissioner - Revision of orders prejudicial to revenue-Income from house property — Stock in trade - Amendment bringing notional annual value of property held as stock-in-trade to tax is prospective- Revision is not valid .[S.23(1)(a), 23(5), 24(a)]

Held that the assessee explained the issues in response to the notices of the Principal Commissioner. The formation of the opinion and belief of the Principal Commissioner changed from time to time after receiving the reply of the assessee. The Principal Commissioner in his third show-cause notice sought to consider the taxability of deemed rental income not under section 23(5) but under section 23(1)(a) of the Act. The Principal Commissioner had not shown with cogent evidence how the submission made by the assessee was incorrect. All facts and submissions with regard to offer of rental income were on record before the Principal Commissioner. The order of the Assessing Officer was neither erroneous nor prejudicial to the interests of the Revenue and the action under section 263 of the Act was beyond jurisdiction. Amendment bringing notional annual value of property held as stock-in-trade to tax is prospective. Revision is not valid. (AY. 2017-18)

Sai Shirdi Constructions v. PCIT (2022) 98 ITR 22 (SN)(Mum) (Trib)

S. 263 : Commissioner - Revision of orders prejudicial to revenue -Failure to make inquiries or verification- Revision is justified . [S.800JJA, 143(3)]

Held that in the assessment order the Assessing Officer had not brought out anything explicitly or recorded any finding with regard to the deduction claimed under section 80JJAA nor was there anything mentioned in the order that he had verified the eligibility and the correctness of the claim of deduction under section 80JJA. The Act nowhere provides the exact modalities to be followed to verify a specific claim made by the assessee and it is the prerogative of the Assessing Officer to decide the extent of verification. However, it is necessary for the Assessing Officer to record the extent of verification carried out by him and to record that he has taken a considered view on the matter by proper application of mind while allowing the claim of the assessee in the matter. The Principal Commissioner in the show-cause notice had listed out the discrepancies in the claim of deduction under section 80JJAA which according to him "should have been done" by the Assessing Officer and to that extent the Principal Commissioner had found the order of the Assessing Officer erroneous and prejudicial to the interests of the Revenue. The Principal Commissioner was justified in assuming the jurisdiction under section 263 of the Act.(AY. 2017-18, 2018-19)

Terrier Security Services India P. Ltd. v. PCIT (2022) 98 ITR 76 (SN)(Bang) (Trib)

S. 263 : Commissioner - Revision of orders prejudicial to revenue -Sale of plots – Capital gains – Business income – Order was passed considering the evidences produced in the course of assessment proceedings – Revision order was quashed [S. 28(i),45, 143(3)]

The Tribunal held that the Assessing Officer has passed the order after considering the evidences produced by the assessee. The assessment order is in accordance with law. Revision is held to be not valid .(AY. 2013-14)

Dnyaneshwar Pandit Mahajan v. PCIT (2022) 214 DTR 449 / 218 TTJ 521 (Pune)(Trib)

S. 263 : Commissioner - Revision of orders prejudicial to revenue –Deposit of cash in bank – Explained the source – Direction was modified .

Held that AO has not verified the unexplained behaviour of the cash account i.e., huge cash balance far in excess of utilisation and withdrawal of cash despite sufficient cash balance, the revision is upheld in principle; however, the AO is directed to limit his verification to the source of cash introduced in the assessee's cash book, be it by way of withdrawal from bank, revenue or capital receipt, etc., with reference to the corresponding account (viz., bank account, sales/customer account, etc.), cash deposited in the bank (with reference to the relevant bank account/s), petty cash (with reference to the petty cash book) and cash utilized for investment.(AY.2017-18)

Gajraj Minig (P) Ltd. v. PCIT (2022) 220 TTJ 1(UO) (Jabalpur)(Trib)

S. 263 : Commissioner - Revision of orders prejudicial to revenue - Capital gains- Investment in a residential house -Conducted detailed enquiry – Revision is not valid .[S. 54F , 142(1) 143(3)]

Held that theAO has examined the claim of exemption as regards investment in purchase of four residential flats after calling for evidence and other supporting documents . Revision is held to be not valid . (AY. 2016-17)

Deepak Kr. Singh v. PCIT (2022) 218 TTJ 849 (Pat)(Trib)

S. 263 : Commissioner - Revision of orders prejudicial to revenue -Amalgamation – Non- existing company - Not filed the details of effective date of transfer – Assessing Officer was not aware of merger – Revision is held to be valid - : Capital gains - Shifting of industrial undertaking from urban area . [S. 54G]

Held that the Assessee-company has not disclosed the relevant details viz., date of order of sanction of amalgamation by the High Court, appointed date, effective e and the date on which the certified copies of the order of the High Court sanctioning the scheme of amalgamation were filed with Registrar of Companies. Order of Revision is held to be valid . The Tribunal also held that the AO has accepted the claim of exemption under s. 54G by accepting copy of agreement for sale and the contents of the assessee's letter without making any enquiry. Revision was held to be valid . (AY.2012-13)

IRIS Engineering Industries (P) Ltd. v. Dy. CIT (2022) 216 DTR 255 / 218 TTJ 575 (Chennai)(Trib)

S. 263 : Commissioner - Revision of orders prejudicial to revenue -Bad -debt – Provision for bad and doubtful debts – Order was passed after proper application of mind - Revision is held to be not valid [S. 36(1)(viia) , R, 6ABA]

Held that the Assessing Officer has applied the mind , there being nothing to show or suggest that the assessee's claim of deduction under S. 36(1)(viia) is not correct or excessive,

the exercise of power of revision by the Principal CIT under S. 263 was not justified on the ground of lack of enquiry by the AO. (AY.2017-18)
Jila Sahkari Kendriya Bank Mayaadit v. PCIT (2022) 216 DTR 49 /218 TTJ 1005 (Jabalpur)(Trib)

S. 263 : Commissioner - Revision of orders prejudicial to revenue -Capital gains – Reassessment proceedings dropped - Revision is held to be not valid [S. 45, 143(3), 147 , 148]

The Assessing Officer has initiate the reassessment proceedings for failure to disclose capital gains on sale of land during the year . After considering the reply of the assessee the reassessment proceedings were dropped . Commissioner revised the order on the ground that the Assessing officer has accepted the return without application of mind . On appeal the Tribunal held that when the reassessment proceedings were dropped once it was found that the assessees have not sold any land during the relevant year and consequently, no income by way of capital gains has escaped assessment, revision on the ground that the AO has accepted the returned income without making any enquiry was not justified (AY.2012-13)

Kadeer Khan v. PCIT (2022) 215 DTR 369 / 218 TTJ 732 (Jabalpur)(Trib)
Shabana Khan v .PCIT (2022) 215 DTR 369 / 218 TTJ 732 (Jabalpur)(Trib)

S. 263 : Commissioner - Revision of orders prejudicial to revenue – Reassessment - Difference between the cash flow statement and balance sheet - Failure on the part of the AO to examine the same – Revision order is justified . [S. 143(3), 147 , 148]

Held that theAssessing Officer has not applied his mind to the information that has been supplied by the assessee nor he has considered such information nor formed an opinion in respect of such information. Revision order is held to be justified . (AY.2008-09)
L. A. Development v. CIT (2022) 215 DTR 153 /218 TTJ 386 / 142 taxmann.com 280 (Cuttack)(Trib)

S. 263 : Commissioner - Revision of orders prejudicial to revenue -Family settlement – Nominal consideration – Purchase and sale deed was filed in the course of assessment proceedings -Revision is held to be not valid [S. 45 , 50C , 143(3)]

Held that the Assessee has furnished all details and documents to the AQ during the assessment proceedings and convinced him that the transfer of property made by him for the nominal consideration of Rs. 6,00,000 was in pursuance of family settlement and also claimed exemption on the basis of investment of the same amount i.e., Rs 6,00,000, thereby showing Nil capital gains. The Tribunal held that the AO has considered the implication of S. 50C while accepting the nature of the said transaction and, therefore, it cannot be said that the order passed by the AO is erroneous insofar it is prejudicial to the interest of Revenue. Revision order was quashed . (AY.2010-11)

Shailendra Jhanjhari Legal Heir of Dilip Kumar Jhanjhari v. PCIT (2022) 218 TTJ 33 (UO) (Indore)(Trib)

S. 263 : Commissioner - Revision of orders prejudicial to revenue -Proper enquiry was conducted in the original assessment proceedings – Merely because the CIT does not feel satisfied with the conclusion cannot be the basis for revision – Order of revision was quashed [S. 54 , 54F , 143(3)]

Held that the Assessing Officer has allowed the claim of deduction under S. 54F, after conducting an enquiry by examining the documentary evidences submitted by the assessee. Tribunal held that the order of the AO cannot be branded as erroneous and prejudicial to the interests of the Revenue, hence exercise of jurisdiction under S.. 263 by the Principal CIT was not valid. (AY.2016-17)

Shanti Lal Deora v. ACIT (2022) 220 TTJ 251 (Jodhpur)(Trib)

S. 263 : Commissioner - Revision of orders prejudicial to revenue -Transaction of two properties – Capital gains - Remand proceedings the Assessing Officer informed that the transactions are reported – Revision order was quashed [S. 45]

Principal CIT has initiated the revision proceedings under S. 263 under the misconceived impression that the assessee has not disclosed the sale of two properties . Tribunal held that the AO confirmed in his remand report that the sales of both the properties have been duly recorded in the assessee's books of accounts. The tribunal held that the assessment order cannot be said to be erroneous. Revision order was quashed . (AY.2014-15)

Rita Goyal v. PCIT (2022) 220 TTJ 17 (UO) (Jodhpur)(Trib)

S. 263 : Commissioner - Revision of orders prejudicial to revenue -Corpus donation and loan – Received from entities controlled by the same authority as the assesse - Voluntary contribution made with specific direction may be excluded – Revision was up held with direction . [S. 11(1)(d)]

Held that AO has allowed exemption under S. 11(1)(d) to the assessee-trust with respect to the corpus donation and loan amount despite his own finding in the assessment order that the corpus donation as well as the loan are voluntary contributions for the reason that the same were received from entities controlled by the same authority as the assessee. Revision order

was affirmed with the direction that the voluntary contribution made with specific direction may be excluded.(AY. 2016-17, 2017-18)

Saifee Byjhani Upliftment Trust v. CIT (E) (2022) 216 DTR 23 / 220 TTJ 585 (Mum)(Trib)

S. 263 : Commissioner - Revision of orders prejudicial to revenue - AO made an extensive, elaborate and necessary enquiry with a view to find out whether the assessee fulfils the conditions mentioned in s. 80-IB or not- Revision is not valid -Commissioner cannot revise the order merely on the proposal sent by the Assessing Officer . [S.80IB (11A]

Held that the AO has made elaborate and necessary enquiry for ascertaining as to whether the assessee has fulfilled the conditions mentioned in S. 80-IB as evident from the reading of the notices and replies thereto and allowed the claim for deduction only after satisfying himself that the assessee has fulfilled all the necessary conditions for claiming the deduction. Revision order was quashed . Order passed by the Principal CIT is quashed also on the ground that the proposal for initiation of proceedings under S. 263 was sent by the same AO. AO cannot be given the right to review his own order in the garb of sending proposal under section 263 of the Act . (AY.2013-14)

KBB Nuts (P) Ltd. v. PCIT (2022) 220 TTJ 716 (Amritsar)(Trib)

S. 263 : Commissioner - Revision of orders prejudicial to revenue -Heavy cash deposited in the bank – Revision order was affirmed – Direction was modified to consider only cash deposited in the bank [S. 143(3)]

Commissioner passed the Revision order pass the de novo assessment on account of huge deposit of cash in the bank accounts of the assessee. On appeal the Tribunal affirmed the revision order and modified the direction to consider only cash deposited in the bank . (AY. 2017 -18)

Gajraj Mining (P) Ltd v .PCIT (2022) 220 TTJ 1 (UO)(Jabalpur)(Trib)

S. 263 : Commissioner - Revision of orders prejudicial to revenue – Cash deposit – Demonetisation – Specific query was raised in the original assessment proceedings - CIT failed to give any plausible reason as to why he does not agree with the opinion of the AO – Revision order was quashed .[S. 143(3)]

Held that AO has raised a specific query about the cash deposit made by the assessee in its bank account during the demonetization period and the assessee submitted complete details and explained that the large deposit in the bank was made out of the unutilized withdrawals

made out of its CC facility before the declaration of demonetization. Tribunal held that the AO made due enquiry on the issue , therefore, the Revision order was quashed . (AY. 2017-18)

Bharat Tirtha Rice Mill v. PCIT (2022) 220 TTJ 1057 (Kol)(Trib)

S. 263 : Commissioner - Revision of orders prejudicial to revenue - Capital gains-Investment in a residential house –Proper enquire was made by the Assessing Officer , purchase deed and other documents were filed – Revision is not valid [S. 54F, 143(3)]

Held that theAssessing Officer in the course of assessment proceedings has made due inquiries about the capital gain earned on sale of agricultural land as well as the assessee's claim of exemption under S. 54F , the assessee has submitted voluminous evidences in support of his claim of exemption. Order of CIT was quashed .(AY. 2015-16)

Daljit Singh Bassi v. PCIT (2022) 220 TTJ 5 (UO)(Chd)(Trib)

S. 263 : Commissioner - Revision of orders prejudicial to revenue - Derivative transactions – Fresh material/data received from NSEL- No specific finding recorded by the PCIT – Revision order was quashed . [S. 133(6) 143(2)]

Held that the Assessing Officer called for information/documentation from the assessee to examine the net profit/premium from transactions in the F&O segment and also called for information from the assessee's broker through whom the transactions were conducted and cross verified the figures reported in the return of income. Revision order was quashed . (AY. 2016-17)

Deepak (HUF) v. PCIT (2022) 220 TTJ 447 (Chd)(Trib)
Sunita Gupta (Smt) v. PCIT (2022) 220 TTJ 447 (Chd)(Trib)
Rajat Gupta v. PCIT (2022) 220 TTJ 447 (Chd)(Trib)
Vishal Gupta (HUF) v. PCIT (2022) 220 TTJ 447 (Chd)(Trib)

S. 263 : Commissioner - Revision of orders prejudicial to revenue -Licence fee – Disallowance on ad -hoc basis – Non application of mind – Revision order was quashed . [S. 37(1)]

Held that the Assessing Officer neither made any enquiry before allowing the deduction of license fee claimed by the assessee nor verified and reconciled the purchases and sales of liquor in quantitative terms to ensure that the entire sales is duly booked in the accounts and that the sales is in fact accounted in the books of account at MRP as claimed by the assessee, nor investigated the declaration of meagre profit by the assessee vis-a-vis TCS receipts and claim of large amount of refund out of TCS. Revision order was affirmed .(AY. 2016-17)

Dinesh Kumar Singh v. PCIT (2022) 220 TTJ 545/ (2023) 221 DTR 409 (All)(Trib)

S. 263 : Commissioner - Revision of orders prejudicial to revenue -Repayment of loan – Cash deposited in the bank - Examined by the Assessing Officer – Revision order was quashed . [S. 269T]

Held that the Assessing Officer conducted detailed enquiries and made proper application of mind after examining the relevant documents before taking a possible view in respect of cash deposit in the assessee's bank account, payment of unsecured loans and possible violation of the provisions of S. 269T of the Act . Revision order is not valid .(AY. 2015-16)

Sauria Agarwal v. PCIT (2022) 215 TTJ 523 / 211 DTR 63 (Cuttack)(Trib)

S. 263 : Commissioner - Revision of orders prejudicial to revenue -Share capital –Cash credits - Evidences in the form of confirmation letters were produced in the original assessment proceedings – Additional evidence by Revenue - Charge sheet in criminal proceedings- Not relevant to issue - Additional evidence is not admitted- Revision order was quashed . [S. 2(24), 28(iv), 56(2)(vii)(b), 68 , 254(1), ITAT R. 29, CrPC, S. 161 , 164]

Held that AO has accepted the share capital received by the assessee from its holding company as genuine after considering all the relevant documents with supporting evidences adduced by the assessee company including the confirmation and other details filed by the holding company before the AO, hence it cannot be said that the order of the AO is erroneous or prejudicial to the interest of the Revenue. The very issue which is the subject-matter of the impugned revision has been already considered in the hands of the holding company, by the CIT(A) , hence the revision order was quashed Additional evidences filed by the Revenue which mainly includes the CBI charge sheets statements recorded before CBI under S. 161 and 164 CrPC before the Magistrate correspondences between the investor companies and the State Government documents procured from various State Government Authorities, statements recorded by the AO during the penalty proceedings. documents containing allotment of land, etc are not relevant for deciding the issues arising in the appeal addition of share premium under S. 56 and share capital and share premium under S. 68 because the entire details relating to the facts are available in the orders of the lower authorities i. e the assessment order and the order of the CIT(A) and hence the additional evidences are not admitted. (AY.2008 -09)

Jagati Publications Ltd. v. ACIT (2022) 215 TTJ 818 / 210 DTR 137 (Hyd)(Trib)

Editorial: Special Bench constituted was quashed Jagati Publications Ltd. v. President ITAT (2015) 377 ITR 31/ 279 CTR 271/ 124 DTR 131 (Bom)(HC) . SLP of Revenue is pending and No stay of proceedings. (Diary No. 42483 / 2015 filed on 18 th December , 2015 . Case No SLP (c) No. 005296 /2016 Registered on 19 th Feb , 2016 , SLP (C) No. 001974 /2016 , Registered on 29 th Jan. 2016 .

S. 263 : Commissioner - Revision of orders prejudicial to revenue -Long term finance – Interest on income tax refund – Re -possessed vehicles treating as bad debt -Non

disallowance of unpaid leave encashment - Pendency of appeal before CIT(A) – No merger – Revision is justified- Partly quashed . [S. 36(1)(viia), 36(1)(viii), 250]

Held that AO having failed to make any enquiries to examine whether the correct lease rental income as well as interest on income-tax refund has been included in the long-term finance income of the assessee for working out the deduction under S. 36(1)(vii), the Principal CIT was justified in setting aside the assessment order. Merely an appeal before the CIT(A) against the order of the AO, it cannot be said that the CIT(A) has 'considered and decided the issue when there is no dispute with respect to the computation of the long-term finance income of the assessee for working out deduction under S. 36(1)(vii) in the ground of appeal. As regards bad debt the revision was quashed .(AY.2011 -12)

ICICI Bank Ltd. v. Dy. CIT(2022) 217 TTJ 296 (Mum)(Trib)

S. 263: Commissioner - Revision of orders prejudicial to revenue -Proper enquiry was made in the course of original assessment proceedings – Revision order was quashed .[S.68, 69A, 142(1)]

Held that the AO has made adequate, sufficient and proper enquiry on both the issues during scrutiny assessment proceedings by issuing notice under s. 142(1) and considered the reply and documentary evidence furnished by the assessee. Order of revision is held to be not valid (AY.2016 -17)

Kalinga Institute of Industrial Technology (KIIT) v. CIT (E) (2022) 217 TTJ 690 / 214 DTR 1 (Cuttack)(Trib)

S. 263 : Commissioner - Revision of orders prejudicial to revenue -Proposal sent by the Assessing Officer - AO cannot use the power of the CTT and recommend a revision- CIT having passed the order on the basis of the proposal sent by the AO, it is a case of jurisdiction deficit- Order was quashed on legal issue. [S. 143(3), 147, 154]

Process of revision under section 263 can be initiated only when the CIT calls for and examines the record of any proceeding under the Act and considers that any order passed by the AO is erroneous and prejudicial to the interests of the Revenue. On the facts the CIT having initiated the revision proceedings pursuant to the proposal sent by the AO, the revision was quashed on the ground of jurisdictional deficit . (AY. 2012 -13)

Alfa Lavel Lund AB v. CIT (IT)(2022) 215 TTJ 814 (Pune)(Trib)

S. 263 : Commissioner - Revision of orders prejudicial to revenue -Lack of proper enquiry – Delayed deposit of the employees' contribution towards Provident fund - Revision is not valid [S. 36(1)(va) ,43B, 80P(2)(a)(i)]

The assessee society is registered under the Maharashtra Co-operative Credit Societies Act, 1960 which takes within the sweep of the definition of "Member" even "Nominal Members" omission on the part of the 40 in not bringing on record the transactions entered into by the

assessee society with its nominal members and allowing deduction under S. 80P qua such transactions did not render his order erroneous insofar as it was prejudicial to the interests of the Revenue. AO having taken one of the plausible views in allowing deduction under s. 80P(2)(a)(i) qua interest earned by the assessee society on its deposits with scheduled banks, the order of the AO could not be held as erroneous insofar as prejudicial to the interest of the Revenue in exercise of jurisdiction under s. 263 of the Act . Failure on the part of the AO to disallow the delayed deposit of the employees' contribution towards PF under S. 36(1)(va) did not render his order erroneous insofar it was prejudicial to the interest of the Revenue under S.263 of the Act . (AY. 2013 -14 , 2014 -15))

Bhagashri Nagri Sahakart PT. Sanstha Maryadit v. PCIT (2022) 217 TTJ 40 (UO)(Nag)(Trib)

S. 263 : Commissioner - Revision of orders prejudicial to revenue -Reassessment was done on account of capital gains- Assessing Officer is not making any addition on capital gain -Addition was made on account of sale of shares – Revision order on other issues is not valid in law [S. 45 , 54, 143(3), 147 , 148]

Held that since the AO did not make any addition on the issue for which the assessment was reopened meaning thereby that the reassessment proceedings became final .CIT could act explore any other issue under a 263 which could not be explored by the AO in reassessment proceeding . The AO had made any addition on account of long-term capital gain earned by the assessee on transfer of industrial plot, then other points could also be examined-in the absence of any addition on the first point, no other issue can be entertained, even under revisional Jurisdiction under 263 of the Act . Revision order was quashed . FollowedCIT v .Mohmed Junded Dadani (2013) 258 CTR 168/ 85 DTR 12 / 355 ITR 172 (Guj) (HC) Ranbaxy Laboratories Ltd v. CTT (2011) 242 CTR 117/ 57 DTR 281 / 336 ITR 136 (Delhi)(HC) CTP v. Jet Airways (1) Ltd (2011) 239 CTR 183 /52 DTR 71/ 331 ITR 236 (Born) (HC) (AY. 2011 -12)

Binal Parixit Patel (Mrs) v. PCIT (2022) 217 TTJ 10 (UO) (Ahd)(Trib)

S. 263 : Commissioner - Revision of orders prejudicial to revenue -Lack of adequate opportunity – Basic enquiries are not conducted by the PCIT – Revision order was quashed .[S. 143(3)]

Held that the Principal CIT having given only four days' time to the assessee to respond to the show cause notice and passed the revisional order under S. 263 ignoring the assessee's reply seeking more time and without issuing any further notice, effective opportunity of being heard was denied to the assessee and therefore the order was quashed (AY. 2016 -17). The Tribunal also referred Apex Court in the case of Parashuram Pottery Works Co . Ltd v .ITO (1977) 106 ITR 1 (SC) " It has been said that the taxes are the price that we pay for civilization. If so, it is essential that those who are entrusted with the task of calculating and realising that price should familiarise themselves with the relevant provisions and become well-versed with the law on the subject. Any remissness on their part can only be at the cost of the national exchequer and must necessarily result in loss of revenue. At the same time, we have to bear in mind that the policy of law is that there must be a point of finality in all legal proceedings, that stale issues should not be reactivated beyond a particular stage and that

lapse of time must induce repose in and set at rest judicial and quasi-judicial controversies as it must in other spheres of human activity."

Fortune Metaliks Ltd. v. PCIT (2022) 217 TTJ 662 / 215 DTR 37 / 95 ITR 477 (Chd)(Trib)

S. 263 : Commissioner - Revision of orders prejudicial to revenue – Limited scrutiny - PCIT cannot travel beyond the Limited scrutiny Investment – Investment reflected in balance sheet – Furnished basic details – Direction was modified to consider the investment made in the course of the set aside proceedings. [S. 143(3)]

Held that the in the revision proceedings the PCIT cannot travel beyond the Limited scrutiny . Assessee having merely furnished the details of its substantial statements in unquoted equity shares in response to the queries raised by the Assessing Officer such furnishing of bare basic details cannot be brought within the realm of making of enquiries or carrying out verification and therefore, the order passed by the AO under s. 143(3), is erroneous insofar it is prejudicial to the interest of the Revenue on the said count ie., failure on the part of the AO in carrying out verifications as regards the substantial investments. Accordingly the direction of the PCIT was modified to consider the investment made in the course of the set aside proceedings . (AY. 2015 -16)

Aryadeep Complex (P)Ltd. v. PCIT (2022) 219 TTJ 735 /218 DTR 25 (Raipur)(Trib)

S. 263 : Commissioner - Revision of orders prejudicial to revenue -Limited Scrutiny - Assessing Officer examined all facts relating to issues selected for limited scrutiny — Failure to make enquiry into issue relating to invested in unlisted equities —Revision is not valid .[S. 56(2(viia), 143(3)]

Allowing the appeal the Tribunal held that the enquiry qua the provisions of section 56(2)(viia) of the Act was not necessary on the facts when the provisions of section 56(2)(viia) of the Act as they stood for the assessment year 2015-16 were for taxability as income from other sources in the hands of the company receiving the shares, whereas during the year under consideration, the assessee had invested in equity shares. By no stretch of imagination could it be said that failure to make enquiry under section 56(2)(viia) of the Act made the assessment order erroneous and prejudicial to the interests of the Revenue keeping in mind that the return was selected for limited scrutiny and the Assessing Officer had examined all the facts relating to the reasons for selection of the case for limited scrutiny. Therefore, the assessment order framed by the Assessing Officer could not be faulted. The order of the Principal Commissioner under section 263 of the Act set aside. (AY.2015-16)

Reinforce Recruiter Pvt. Ltd. v. PCIT (2022)99 ITR 13 (SN)(Delhi) (Trib)

S. 263 : Commissioner - Revision of orders prejudicial to revenue -Exemption allowed after considering written submissions and supported documents – Revision is held to be not valid [S. 54F]

Held that explicit queries about the long-term capital gains and exemption claim were raised and pursuant thereto a submissions were made by the assessee. Thereupon a consequential inquiry into the assessee's entitlement was carried out and on finding no evidence thereagainst, the exemption was allowed. Accordingly the action of Chief Commissioner was not sustainable at law. There being no infirmity in the order of assessment, the revision order was quashed.(AY.2015-16)

Sangeeta Ganpati Jadhav (Smt.) v. CCIT (2022)99 ITR 62 (SN)(Pune)(Trib)

S. 263 : Commissioner - Revision of orders prejudicial to revenue – Business expenditure – Revision is held to be not valid [S. 68, 69C]

Held that the assessee had furnished the relevant details and explained the issues raised through the show-cause notice by the Principal Commissioner, supporting its contentions by corroborative documentary evidence. The Principal Commissioner had not applied his mind to arrive at a conclusion that the order was erroneous in so far as prejudicial to the interests of the Revenue, for passing the order under section 263 of the Act. The issue was purely on the facts which were verifiable from the records of the assessee. Examination and verification of the audited financial statements revealed the correct state of its affairs in respect of the issue raised in the revision proceedings which the Department had not controverted. Revision was quashed . (AY.2011-12)

Sethi Finmart (P.) Ltd. v. PCIT (2022)99 ITR 59 (SN)(Kol) (Trib)

S. 263 : Commissioner - Revision of orders prejudicial to revenue -Assessment order passed giving effect to order of Settlement Commission – Revision is not valid [S. 143(3) , 245D(3), 245D(4)]

Held that the order passed by the Assessing Officer under section 143(3) read with section 245D(4) of the Act could not be construed as an order passed by a subordinate authority in view of the fact that the Settlement Commission order has been passed by officers of the rank of the Chief Commissioner. Revision order was quashed . (AY.2001-02 to 2003-04)

Siemens Ltd. v . CIT (2022)99 ITR 50 (SN)(Mum) (Trib)

S. 263 : Commissioner - Revision of orders prejudicial to revenue -Freebies or gifts – stockists and distributors – Enquirers were made in the assessment proceedings – Revision is not valid [S. 37(1) , 153A]

Held that the freebies or gifts were given to stockists and distributors . Enquirers were made in the assessment proceedings . Once there is application of mind and enquiry has been made by the Assessing Officer , the assessment cannot be treated as erroneous or prejudicial to the interest of the Revenue . (AY. 2008 -09 to 2018 -19)

Leeford Health Care Ltd v. PCIT (2022) 99 ITR 19 (Chd)(Trib)

S. 263 : Commissioner - Revision of orders prejudicial to revenue – Payments in cash in excess of prescribed limit — Jewellery business -Exchange of old gold jewellery - No actual transaction of payment of cash for making purchases exceeding limit-No

independent enquiry conducted by Principal Commissioner — Revision order was quashed. [S. 40A(3), 143(3)]

Allowing the appeal the Tribunal held that the Assessing Officer had called for various details of cash deposits in the bank, cash sales and cash deposits, information regarding mis-match of total sales as per the value added tax return and sales shown and purchases figures appearing in the profit and loss account and audited balance-sheet. A detailed enquiry had been conducted by the Assessing Officer and complete details with necessary evidence and explanation had been filed by the assessee and thus, it remained uncontroverted that an independent enquiry was carried out by the Assessing Officer and after due consideration of facts and proper application of mind a permissible view had been taken for assessing the income of the assessee. No independent enquiry had been conducted by the Principal Commissioner on his own before setting aside the order of the Assessing Officer.There was no violation of provisions of section 40A(3) of the Act in the case of assessee as alleged by the Principal Commissioner, as there was no actual transaction of payment of cash for making purchases exceeding the limit as prescribed under section 40A(3) of the Act. Since there was no violation of the provisions of section 40A(3) of the Act, no disallowance was called for in the hands of the assessee. Thus, the Principal Commissioner had erred in not considering the facts in the correct perceptive and in holding that the assessment order was erroneous and prejudicial to the interests of the Revenue.(AY.2017-18)

Radheyshyam Gupta v. PCIT (2022) 99 ITR 682 (Kol) (Trib)

S. 263 : Commissioner - Revision of orders prejudicial to revenue -Real estate business – Income from undisclosed sources – Survey -Unrecorded income – Additional income was business income – Income cannot be assessed under section 115BBE of the Act . [S. 68, 69A , 115BBE , 131]

Held that during a survey under section 133A carried out at the assessee's premises, the husband of the assessee in a statement recorded under section 133A / 131 admitted unrecorded income in the case of his wife, the assessee, which consisted of property advances and cash and there was no other known or unknown source of business. Subsequent cash recoveries were made from such trade advances and the cash admitted was incorporated in the regularly maintained books of account. The net effect of the accounting entries and the treatment of the sums was that the unrecorded trade advances and cash in hand were brought in the books of account and formed part of business assets and thereafter used in its day-to-day business. The additional income was in the nature of business income and did not fall under section 68 or section 69A of the Act and consequently section 115BBE could not have been invoked. Therefore, the Principal Commissioner was not justified in invoking the provisions of section 263 of the Act . (AY. 2017 -18)

Rekha Shekhawat (Smt.) v. PCIT (2022) 219 TTJ 761 / 218 DTR 161/ 99 ITR 69 (Jaipur)(Trib)

S. 263 : Commissioner - Revision of orders prejudicial to revenue -Capital gains — Transfer — Joint Development agreement deed — Deed stamped at fixed value and not regarded as transfer or conveyance of property — Mere registration of agreement and payment of stamp duty cannot attract provision of section 43CA – Revision order was quashed [S. 2(47) 43CA, 50C] .

Held that a reading of the joint development agreement showed that there was no transfer or sale of the asset (land) thereunder at the time of execution of the agreement. Even the payment made by the developer to the owner was a refundable security. Since there was no sale of stock, the assessee had not returned any profit or gains from the business in his return of income. Even the Principal Commissioner had not given any finding that the assessee had earned any profit from the sale of stock-in-trade. The joint development agreement entered into by the assessee with the developer did not amount to a transfer ; therefore, section 43CA would not be attracted to the case.. Each and every document produced before the registration authority and which was subject to stamp duty could not be regarded as a transfer deed or conveyance deed. Mere registration of the agreement with the registration authority and payment of stamp duty thereon could not ipso facto attract section 43CA when neither the joint development agreement nor the registering or stamp duty authority treated the agreement as one of transfer or conveyance. No profits had been earned by the assessee either actual or hypothetical in the current case. The Assessing Officer's assessment order was neither erroneous nor prejudicial to the interests of the Revenue. The revision order was quashed . Referred CIT v. Balbir Singh Maini (2017)398 ITR 531 (SC) (AY.2014-15)

Emporis Properties Pvt. Ltd. v. PCIT (2022)100 ITR 1 ((Kol)(Trib)

S. 263 : Commissioner - Revision of orders prejudicial to revenue Speculation business — Loss — Set Off- Issue decided by Tribunal in Assessment Year 2013-14 — Cannot be taken up by Principal Commissioner in revision for the Assessment Year 2014-15. [S. 73]

Held that the issue of applicability of the Explanation to section 73 of the Act, would operate retrospectively from April 1, 1977 though the amendment was made with effect from April 1, 2015. Since the Tribunal in the assessee's case for the assessment year 2013-14 had held that the principal business of the assessee was trading in shares, and that the deemed speculative loss from trading in shares was to be set off against the business income of the assessee, the same issue could not be taken up by the Principal Commissioner for the assessment year 2014-15.Referred .F. G. Investments P. Ltd . v. ITO (I. T. A. No. 36/Cochin/2018, dated September 26, 2018). (AY. 2014-15)

F. G. Investments Pvt. Ltd. v. PCIT (2022)100 ITR 17 (Cochin) (Trib)

S. 263 : Commissioner - Revision of orders prejudicial to revenue -Long-term capital gains —Assessing Officer applied his mind in the course of assessment proceedings – Revision was not valid [S. 45 , 143(3)]

Held, that out of 100 per cent. sale consideration 95.36 per cent. was offered as capital gains and the claim of the assessee was less than 5 per cent. Thus, the Assessing Officer could not find any further fault when he had already disallowed the cost which in his opinion was not supported by documentary evidence and the Assessing Officer had already verified the issues which the Principal Commissioner had pointed out. Therefore, the order of the Assessing Officer was to be restored. Revision was quashed . (AY.2016-17)

Hindustan Sales Industrial Corporation v. PCIT (2022)100 ITR 126 (Jaipur) (Trib)

S. 263 : Commissioner - Revision of orders prejudicial to revenue -Assessing Officer applying his mind and taking possible view — Revision order was quashed . [S.56(2)(vii), 92E, 92F]

Held that the Assessing Officer satisfied himself and had taken a plausible view and had considered the transaction of share premium and thereby the investment in the assessee-company made by the shareholders duly explained by the assessee. The requirement of proving the identity, capacity of the investor and genuineness of the transaction was proved by placing on record all the related proof of the investor. Based on the evidence before him the Assessing Officer had taken a view which is also one of the views and there was no clear finding of the Principal Commissioner why and how the view taken by the Assessing Officer was not legally correct. Revision order was quashed . (AY.2017-18)

Kalyan Buildmart Pvt. Ltd. v. PCIT (2022)100 ITR 642 ((Jaipur) (Trib)

S. 263 : Commissioner - Revision of orders prejudicial to revenue – Depreciation – Asset financing – Operating lease and Finance Lease – Entitle to depreciation – Excess interest – Rule of consistency-Revision was quashed. [S. 2(28A) , 32]

Held that for the requirements of depreciation allowance under section 32 of the Act, the conditions to be satisfied are, the assessee must be owner of the asset and the asset must be used for the purposes of business or profession. The assessee as lessor, was the absolute owner of the assets leased under finance lease and the lessee had only the right to use the vehicles. The lessee could not create any charge or encumbrance on the vehicle at any time or object to inspection of the vehicles by the lessor. At the conclusion of the lease period, the lessee was obliged to return the vehicle to the lessor and if the lessor terminated the leasing of any vehicle due to the default of the lessee, the lessee had immediately to surrender the vehicle to the lessor. The lease of vehicles under the finance lease was part and parcel of its business and the income therefrom had been offered to tax under the head “Profits and gains from business or profession”. Therefore, the conditions contained in section 32 of the Act were met and the allowance of depreciation on assets leased under finance lease was neither erroneous nor prejudicial to the interests of the Revenue.Held that for the assessment years 2016-17, 2018-19 and 2019-20, no adjustment had been made with respect to excess interest spread nor recognised as income in these respective years. Further, the Principal Commissioner himself had noted referring to RBI guidelines that “the gain on assignment was required to be recognised over the tenure of the loan, hence, from the assessment year 2012-13 the company had stopped to recognise the same only when redeemed in cash.” Thus, when the excess interest spread income had been offered in the subsequent years as and when

it was received, there was no prejudice caused to the interests of the Revenue and the order could not be held to be erroneous.(AY.2017-18)
Poonawalla Fincorp Ltd. v. PCIT (2022)100 ITR 151 (Kol) (Trib)

S. 263 : Commissioner - Revision of orders prejudicial to revenue -Real estate business — Interest debited to profit and loss account included in capital work-in-progress — Project completion method [S. 145]
Held that the assessee had furnished details of stock and work-in-progress to the Assessing Officer during the assessment proceedings which clearly reflected interest included in it. The assessee had clearly demonstrated both to the Assessing Officer and the Principal Commissioner that the valuation of closing stock of work-in-progress was in accordance with the method of accounting followed by it, i. e., project completion method and that all costs relating to incomplete projects as at the end of the year, including interest cost, were included in the valuation of work-in-progress. No infirmity had been pointed out by the Principal Commissioner in the explanation of the assessee. Revision is held to be not valid . (AY.2015-16)
Rushabhdev Infra Project Pvt. Ltd. v. PCIT (2022)100 ITR 625 (Ahd)(Trib)

S. 263 : Commissioner - Revision of orders prejudicial to revenue -Capital gains – Joint ownership -Revision is held to be not valid . [S. 54F]

Held, that the assessee, during the immediately preceding year 2016-17, had purchased a residential house in joint ownership with her family members and executed a memorandum of understanding according to which the assessee's share was 50 per cent. The shares of the other joint co-owners in the property clearly appeared in the assessment year 2016-17. The Assessing Officer had raised a query and verified the claim of the assessee. Though the Assessing Officer may not have called for full details in the assessment year 2017-18, it could not be said that the assessment order passed was erroneous and prejudicial to the interests of the Revenue. The memorandum of understanding was already executed and declared the share of the each co-owner, and by no means could be considered as an afterthought. The Principal Commissioner had wrongly invoked the provisions of section 263 of the Act. Therefore, the order of the Principal Commissioner was quashed.(AY. .2017-18)
Renu Poddar (Smt.) v. PCIT (2022)100 ITR 602 (Jaipur)(Trib)

S. 263 : Commissioner - Revision of orders prejudicial to revenue -Short term capital gain – Accommodation entries – Penny stock – Plausible view – Revision is not valid [S. 45]
Tribunal held that the Assessing Officer had taken a plausible view that the transaction was not a penny stock trading, but in fact genuine trading transactions of VIL shares and accordingly allowed the claim of short-term capital gains returned by the assessee. The Principal Commissioner having not pointed out insufficiency in the explanation and the evidence filed by the assessee, and also not specifying what information was with the Assessing Officer against the assessee, there could be no finding of error in the order of the Assessing Officer accepting the assessee's claim of the transactions being genuine. Revision order was set aside.(AY.2011-12)
Mohsin Zulfikar Koradia v. PCIT (2022)100 ITR 25 (SN)(Ahd) (Trib)

S. 263 : Commissioner - Revision of orders prejudicial to revenue - Cash deposits - Demonetisation period – Withdrawal of appeal and issue settled under Direct Tax Vivad Se Vishwas Act, 2020- Revision is not valid . [S. 68, 143(2) Direct Tax Vivad Se Vishwas Act, 2020, S. 5(3), 8]

Allowing the appeal the Tribunal held that the issue of cash deposits during the demonetisation period had been considered by the Assessing Officer in the original assessment proceedings under section 143(3) of the Act and the assessee had opted for the settlement under the 2020 Act for the additions made in this regard. Section 8 of the 2020 Act clearly mentioned that the immunity was not available for any proceedings other than those in relation to which the declaration has been made. However, the Principal Commissioner had initiated the revision proceedings under section 263 on the same issue which the assessee had already opted to settle under the 2020 Act. The assessee's forms under the 2020 Act had been accepted. Accordingly, the Principal Commissioner was not justified in initiating proceedings under section 263 of the Act when the assessee had opted to settle the dispute under the 2020 Act.(AY.2017-18)

Pavan Kandkur v. PCIT (2022)100 ITR 47 (SN)(Bang) (Trib)

S. 263 : Commissioner - Revision of orders prejudicial to revenue -Provision for expenses – Method of accounting - Issue was examined by the Assessing Officer – Revision is not valid .[S. 37, 143(3) 145]

Held that the Assessing Officer conducted enquiry by issuing notice under section 142(1) of the Act asking questions pertaining to provision for construction expenses, the issue raised by the Principal Commissioner in his order under section 263 of the Act. In response to the notice under section 142(1) of the Act, the assessee submitted its reply in the assessment proceedings about the work-in-progress (construction expenses). The Assessing Officer examined the issue and took a possible view and completed the assessment. Therefore, such assessment order should not be considered as erroneous and prejudicial to the interests of the Revenue. Besides, the Principal Commissioner had not set out why this item of provision for expenditure needed to be investigated and what type of inquiry ought to have conducted by the Assessing Officer. None of the reasons set out by the Principal Commissioner for invoking the jurisdiction under section 263 of the Act was sustainable.(AY.2017-18)

S. U. Enterprise v. PCIT (2022)100 ITR 27 (SN)(Surat) (Trib)

S. 263 : Commissioner - Revision of orders prejudicial to revenue - Undisclosed money — Firm — Remuneration to partners — On money- Survey -Declaration – Deduction allowed – Revision is not valid.[S.37,40(b),69A,115BBE]

Held that as the "on money" declared by the assessee was business income the service tax related to "on money" and remuneration paid to partners out of on money declared by the assessee were allowable expenses. The service tax which was related to on money, represented expenses of business. The partners' remuneration was also expenses allowable under the Act. The Assessing Officer, while framing the assessment order, had allowed expenses related to the business. The Assessing Officer had taken one of the possible views. Therefore, the order passed by the Assessing Officer was neither erroneous nor prejudicial to the interests of the Revenue. Hence, the jurisdiction exercised by the Principal Commissioner under section 263 of the Act was not sustainable.(AY.2015-16)

Shivam Developers v. PCIT (2022)100 ITR 29 (SN) (Surat) (Trib)

S. 263 : Commissioner - Revision of orders prejudicial to revenue -Transfer Pricing adjustment- Addition was deleted by Tribunal - Capitalisation of Foreign Exchange fluctuation loss on long-term foreign currency Loan taken for capital expenditure — Revision is not valid [S.43A 92C 143(3)]

Held that the issue relating to transfer pricing adjustment made by the Transfer Pricing Officer on receipt of guarantee fees by the assessee from its associated enterprises had been deleted by the Tribunal . Capitalisation of Foreign Exchange fluctuation loss on long-term foreign currency Loan taken for capital expenditure . Revision is not valid.

TCG Lifesciences Pvt. Ltd. v. PCIT (2022)100 ITR 52 (SN)(Kol.) (Trib)

S. 263: Commissioner - Revision of orders prejudicial to revenue – Capital gains- Difference between sale consideration of property and guideline value of property on date of registration- Revision justified. [S. 45, 50C]

The Tribunal held that there was a difference between the stated consideration received for transfer of the property and the guideline value of the property as on the date of registration. The assessment order passed by the Assessing Officer was erroneous, in so far as it was prejudicial to the interests of the Revenue. (AY .2015-16)

Dhanalakshmi Mills Ltd v. Dy.CIT (2022)97 ITR 77 (SN) (Chennai) (Trib)

S. 263 : Commissioner - Revision of orders prejudicial to revenue - Rate of depreciation- Windmills installation-Change of law- Windmill installed on or before 31-02-2023-Eligible for 80% of depreciation- Revision is not valid . [S. 32]

The Tribunal held that since, the windmills on which higher depreciation at 80 per cent was claimed by the assessee had been installed by the assessee on or before March 31, 2012, the assessee was entitled to higher depreciation at 80 percent on the windmills for the assessment year 2015-16 and there being no error in the order of the Assessing Officer allowing depreciation at higher rate of 80 percent on the said windmills, the Principal Commissioner was not justified to revise it under section 263 of the Act. (AY. 2015-16)

GFL LTD. v. PCIT (2022)97 ITR 11 (SN) (Ahd) (Trib)

S. 263: Commissioner - Revision of orders prejudicial to revenue – Deduction for interest on deposits kept with banks allowed - Revision justified. [S.80P].

The Tribunal held that the Principal Commissioner had passed the order after due application of mind to the facts of the case, analysis of the original assessment order, specifically observed that the claim of the assessee was allowed without analysis of facts of the case. There was no infirmity in the order passed by the Principal Commissioner under section 263 of the Act. (AY. 2012-13).

Gujarat Fisheries Central Co-Operative Association Ltd. v. PCIT (2022)97 ITR 9 (SN)(Ahd) (Trib)

S. 263: Commissioner - Revision of orders prejudicial to revenue – A.O. satisfied with sale consideration after perusal of all documents- Circle rate less than sale consideration in all flats except one- Additions made to the extent of one flat- Not a case where enquiry not made- revision not justified. [S. 43CA]

The order passed by the Assessing Officer was neither erroneous nor prejudicial to the interests of the Revenue and there was no question of invocation of revision jurisdiction by the Principal Commissioner under section 263 of the Act. (AY. 2014-15)

Harish H. Gandhi v. ACIT (2022)97 ITR 24 (SN) (Mum) (Trib)

S. 263: Commissioner - Revision of orders prejudicial to revenue – Sale of Shares- Capital Gains- Deduction towards indemnity claim and Ex gratia claim of employees not allowable- Jurisdiction rightly invoked- Assessing Officer to examine matter afresh uninfluenced by observations of Principal Commissioner.[S. 37(1), 143(3)]

The Principal Commissioner was justified in assuming the jurisdiction under section 263 of the Act by setting aside the assessment order. However, the observations of the Principal Commissioner on the merits of the case with regard to the deductions from the capital gains as claimed by the assessee were superfluous and that the Assessing Officer was to examine the claim made by the assessee based on the merits afresh uninfluenced by any of the observations of the Principal Commissioner. (AY. 2015-16).

Dr. R. Sridhar v. PCIT (2022) 97 ITR 71 (SN) (Bang)(Trib)

S. 263 : Commissioner - Revision of orders prejudicial to revenue - Dispute Resolution Panel – Order passed by the Assessing Officer passed order in accordance with directions issued by DRP, same cannot be revised by Commissioner. [S. 144C(13)]

Held that order passed by the Assessing Officer in accordance with directions issued by Dispute Resolution Panel **,** cannot be revised by Commissioner .Explanation 1(a) to section 263 clarifies that order of Assessing Officer in certain cases passed on direction of Superior Officers can be subject matter of section 263 but Explanation 1(a) to section 263 does not include order passed under direction of DRP under section 144C(13). (AY. 2013-14)

Barclays Bank PLC v. CIT (IT) (2022) 215 TTJ 965 /212 DTR 33 / 139 taxmann.com 503 (Mum)(Trib)

S. 263 : Commissioner - Revision of orders prejudicial to revenue – Valuation of stock – Method of accounting - Difference glaring in current assets and current liabilities as shown in balance sheet and in cash flow statement- Revision order was justified .[S.143(3), 145]

Held that the Assessing Officer had called for details regarding difference arising in books of account however had not applied his mind to issue or formed any opinion towards same . There was failure on part of Assessing Officer to examine or make addition in respect of difference between cash flow and balance sheet had clearly made assessment order erroneous and consequently prejudicial to interest of revenue . Revision order is justified . (AY. 2008-09)

L. A. Development v. CIT (2022) 215 DTR 153 /218 TTJ 386 / 142 taxmann.com 280 (Cuttack)(Trib)

S. 263 : Commissioner - Revision of orders prejudicial to revenue – Unaccounted money- Assessee receiving money and repaying it subsequently- Inadequate inquiry - Revision order is held to be not valid - Limitation period from original date of assessment and not from the date of reassessment- Revision time barred.[S. 143(3), 147]

The Tribunal held that Principal Commissioner can exercise powers under section 263 of the Act on satisfaction of twin conditions: the assessment order is erroneous and prejudicial to

the Revenue's interests. This power of revision can be exercised only where no enquiry, as required under the law, is done. It is not open to enquire into a case of inadequate inquiry. The Tribunal also held that if a notice under section 263 of the Act raises a new issue not the subject matter of reassessment proceedings, the two year period contemplated under sub-section (2) of section 263 of the Act would begin from the date of the original assessment and not from the date of reassessment. The revision proceedings were time barred . (AY. 2011-12)

Karan Polymers Pvt. Ltd. v. PCIT (2022)97 ITR 56 (Kol) (Trib)

S. 263 : Commissioner - Revision of orders prejudicial to revenue – Limited scrutiny – Revision order is bad in law . [S. 14A]

Tribunal held that the Assessing Officer was authorised to examine only the limited issue and he was not supposed to scrutinise any other issue relating to the assessment of the income . The PCIT could have exercised his revision jurisdiction in respect of observations or order of the Assessing Officer relating to the limited issue of expenditure incurred on exempt income . The assessment order could not be said to be erroneous on the ground of non- -examination of the issue which the Assessing Officer otherwise was not authorised to examine during the limited scrutiny assessment . The Tribunal held that the assessment order was neither erroneous nor prejudicial to the interests of the Revenue, the order passed by the Principal Commissioner under section 263 being without jurisdiction was wrong, illegal and was to be quashed. (AY.2017-18)

MBL A Capital Ltd. v. PCIT (2022)97 ITR 700 (Kol) (Trib)

S. 263 : Commissioner - Revision of orders prejudicial to revenue - Interest - loan processing fees are not in respect of money borrowed or debt incurred, such loan processing fees cannot qualify as "interest" as defined u/s 2(28A) of the Act- Revision is not valid [S. 2(28A)) 40(a)(ia)]

Held that, the definition of interest in S. 2(28A) uses the expression "service fee or other charge", the loan processing fee cannot qualify as "interest" within the meaning of S. 2(28A). PCIT is not justified in initiating revision proceedings on the ground that the AO has not made disallowance under s. 40(a)(ia) in respect of the loan processing fee paid by the assessee without deducting TDS. Revision order was quashed . (AY. 2014-15)

Badrunisha (Smt.) v. ACIT (2022) 220 TTJ 983 / 220 DTR 338 (Jodhpur)(Trib.)

S. 263 : Commissioner - Revision of orders prejudicial to revenue – Duty entitlement Passbook (DEPB)- Book profit – Provision made for doubtful debt and corporate Debt restructuring – Failure to deduct tax at source- Short deduction of TDS -Revision was quashed – Other issues Revision was held to be valid . [S.37, 40(a)(ia)), 115JB , 145]

Held that, the Assessee Company sold its products to distributors at a price lower than the MRP. This difference has been opined by the PCIT as a commission requiring deduction of tax at source under s.194H of the Act. The said difference by no stretch of imagination, can be considered as commission or brokerage paid by the assessee to its stockists. In order to attract s. 194H of the Act, it is apparent that principal and agent relation must be established. The assessee sold its products to stockists on principal-to-principal basis. Thus, the relation between the assessee and its stockists cannot be described as that of principal and agent. Therefore, the PCIT was not justified in holding the assessment order to be erroneous and prejudicial to the interest of the Revenue on account non-deduction of tax at source from such

amount warranting any disallowance under s. 40(a)(ia) of the Act . Other issues the Revision was up held . (AY. 2012 -13)
Wockhardt Ltd v. PCIT (2022) 220 TTJ 657 / 220 DTR 1 (Pune)(Trib)

S. 263: Commissioner - Revision of orders prejudicial to revenue - Limited Scrutiny — Labour and wages payable — Assumption of jurisdiction well within limited scrutiny- Revision is justified . [S. 143(3)]

The Tribunal held that when the return of income was selected for scrutiny, the only information which was available to the Department was the return of income filed online containing particulars as per the financial statements and not a hard copy of the financial statements filed subsequently; therefore, what had been selected for examination was the figure of sundry creditors amounting to Rs. 76,58,117 by the Assessing Officer and during the course of assessment proceedings, the Assessing Officer on the basis of such selection had proceeded to examine the sundry creditors amounting to Rs. 76,58,117 as part of limited scrutiny assessment to which the assessee had voluntarily participated without raising any objections and supplied information or documentation. Therefore, the assumption of jurisdiction under section 263 was well within the limited scrutiny for which the matter was initially selected for examination by the Assessing Officer. (AY. 2015-16)

Ashwani Marwah v. PCIT (2022)96 ITR 53 / 217 TTJ 359 (Trib) (Chd) (Trib)

S. 263: Commissioner - Revision of orders prejudicial to revenue — Assessing Officer Framing Assessment After Considering All Details And Information Submitted By Assessee — Assessee's claim of increase in valuation of stock properly explained - Commissioner ought to have conducted enquiries himself on not being satisfied — Revision is not valid. [S. 143(3)]
The Tribunal held that it was evident that the Assessing Officer had duly applied his mind and made adequate enquiries regarding the non-inclusion of the sum on account of the increase in valuation of stock as borne out from the assessee's letters and further substantiated by the slight fall in the "gross profit rate" and "net profit rate". It further held that it was also evident from the Principal Commissioner's order that there was no change in the assessee's stand before the Assessing Officer or before the Principal Commissioner and, thus, the Principal Commissioner's contention that the matter required further verification was of no consequence as the assessee had been following a consistent system of accounting and had duly complied with the directions of the Assessing Officer. (AY. 2015-16)

Ganga Acrowools Limited v. PCIT (2022) 96 ITR 171/ 219 TTJ 463/ 217 DTR 396 (Chd)(Trib)

S. 263: Commissioner - Revision of orders prejudicial to revenue - Assessing Officer framing assessment after considering all details- Claim under section 57 was allowed in previous and latter years — Commissioner ought to have conducted independent enquiries on not being satisfied — Revision is not valid [S. 57]

The Tribunal held that the Principal Commissioner was not satisfied with the enquiries made by the Assessing Officer, he should have conducted the enquiries himself to substantiate the findings that the assessment orders were erroneous, instead of simply setting aside the orders

passed by the Assessing Officer and directing him to conduct further enquiries. In fact, as there was due application of mind on the part of the Assessing Officer, who had conducted adequate and proper enquiries, the orders passed under section 263 had no feet to stand on; further, where no show-cause notices were issued on account of unsecured loans, the Principal Commissioner could not have exercised his jurisdiction to set aside the case. Accordingly, the proceedings under section 263 were bad in law and, therefore, to be quashed for the reason that the Assessing Officer had made adequate enquiries and the Principal Commissioner had not conducted any independent enquiry on his own before coming to the incorrect conclusion that the assessment orders were erroneous for being prejudicial to the interests of the Revenue. (AY. 2016-17)

Sanjay Jain v. PCIT (2022)96 ITR 1 (Chd)(Trib)
Sanjay Jain & Sons v. PCIT (2022)96 ITR 1 (Chd)(Trib)
Rajni Jain v .PCIT 2022)96 ITR 1 (Chd)(Trib)
Tarun Jain v .PCIT 2022)96 ITR 1 (Chd)(Trib)

S. 263: Commissioner - Revision of orders prejudicial to revenue - Issues enquired by Assessing Officer —Principal Commissioner without conducting independent inquiry directing the Assessing Officer to carry out detailed inquiries — Revision order was quashed. [S. 143(3)]

The Tribunal held that the Assessing Officer had made adequate enquiries during the course of assessment proceedings and further in support of its claim, the assessee had submitted all relevant documents and evidence in response to the queries raised by the Assessing Officer. All the issues which were the subject matter of the show-cause notice issued by the Principal Commissioner had already been enquired into by the Assessing Officer, and he, after duly considering the voluminous documents and evidence furnished by the assessee, reached a conclusion after due application of mind. Specific queries were raised by the Assessing Officer, and required details were filed in respect of unsecured loans as well as in respect of refining loss in the gold account. It was not the case of the Department that the assessee did not discharge its onus before the Assessing Officer. Therefore, the view taken by the Principal Commissioner that the Assessing Officer had not conducted necessary enquiries prior to the passing of the assessment order and there was non-application of mind on the part of the Assessing Officer was not tenable. Accordingly, the proceedings under section 263 of the Income-tax Act, 1961, were bad in law and were to be quashed. (AY. 2016-17)

Royal Lifestyle Jewellers Pvt. Ltd. v. PCIT (2022) 96 ITR 339 (Chd) (Trib)

S. 263: Commissioner - Revision of orders prejudicial to revenue - Assessing Officer framing assessment after considering all details - Revision order not mentioning how Assessing Officer's order erroneous and prejudicial to interests of Revenue — Revision is not valid [S. 143(3)]

The Tribunal held that since the Assessing Officer had examined all the issues raised by the Principal Commissioner in the revision orders during the assessment proceedings before framing the assessments under section 143(3) read with section 153A, the jurisdiction under section 263 was not validly invoked as the Assessing Officer had taken one of two possible views whereas, according to the Principal Commissioner, the other view ought to have been

taken by the Assessing Officer. In the revision orders passed under section 263, the Principal Commissioner had nowhere given a concrete finding how the assessments framed by the Assessing Officer for the four years were erroneous in being prejudicial to the interests of the Revenue. The jurisdiction was not available to the Principal Commissioner to revise the assessment merely because no reference or discussion had been made on the issues in the assessment order especially when the Assessing Officer had called for details and explanations from the assessee on all the issues proposed by the Principal Commissioner in his order passed under section 263, for which the assessee had filed written submissions with details and evidence. As the Principal Commissioner had not shown how the order framed by the Assessing Officer, after appreciating the evidence filed by the assessee, was contrary to the facts or not in accordance with law, he had not exercised his revisionary jurisdiction validly.(AY. 2013-14 to 2016-17)

Satyam Educational Health and Charitable Trust v .PCIT (2022)96 ITR 36 (Pat) (Trib)

S. 263: Commissioner - Revision of orders prejudicial to revenue - Short-Term capital gains — Sale of land, building and furniture —When capital gains calculated separately in manner directed by Principal Commissioner, result would be short-term capital Loss — Revision is not valid . [S. 143(3).

The Tribunal held that the assessee had filed the details of capital gains arising out of sale of fixed assets with copies of the sale deed and calculations. All the details called for by the Assessing Officer on various occasions along with other details including the audited balance-sheet and tax audit report had been furnished and the Assessing Officer had thoroughly examined the transaction of sale of land, building and furniture by going through the purchase deed, sale deed, calculation of capital gains, the written down value appearing in the balance-sheet, the notes attached to the balance-sheet and the details of sale of land, building and furniture appearing in form 3CD attached to the tax audit report under section 44AB of the Act. Thus, the order of the Assessing Officer was not erroneous in nature. On computation of capital gains separately for sale of land and sale of building, the result would be short-term capital loss. If the capital gains were calculated in the manner as directed by the Principal Commissioner, the assessment so framed shall be prejudicial to the interests of the Revenue. Therefore, where the purchase of land and building and sale of land and building were covered under a single deed of purchase and sale, the calculation made by the Assessing Officer showing short-term capital gains of Rs. 27,31,810 which had been valued in detail by the Assessing Officer, was not prejudicial to the interests of the Revenue.The Principal Commissioner had erred in assuming jurisdiction under section 263 of the Act. Therefore, the order of the Principal Commissioner was to be quashed. (AY. 2017-18)

SPML Infra Ltd. v. PCIT (2022) 96 ITR 291 (Kol)(Trib)

S. 263: Commissioner - Revision of orders prejudicial to revenue - Obvious omissions – Late payment of employees Provident Fund – Revision is justified . [S 43B]

The Tribunal held that though the Assessing Officer had from time to time sought for various details from the assessee and analysed the issues, such as the one related to payment of remuneration to Hindu undivided family, in respect of which there was an ongoing litigation in previous years, equally, there was an obvious omission on the part of the Assessing Officer in not carrying out the necessary reconciliation between total receipts under the head “Sales”

with the party-wise accounts reflected as "job work" receipts from the parties.the disallowance on account of late payment of employees provident fund beyond the due date prescribed under the relevant Act. This issue was not analysed by the Assessing Officer during the course of assessment proceedings, especially when the language of the Act was clear and unambiguous. During the course of assessment proceedings, the Assessing Officer did not verify certain details which should have been done in order to assess the correct taxable income of the assessee. Accordingly, the Principal Commissioner had not erred in law and facts in setting aside the assessment order under section 263 of the Act on the ground that it was erroneous and prejudicial to the interests of the Revenue. The assessment was accordingly set aside to pass a fresh order after giving due opportunity of hearing to the assessee.(AY. 2010 -11)

Himanshu Engineering Works v. PCIT (2022)96 ITR 35 (SN)(Ahd) (Trib)

S. 263: Commissioner - Revision of orders prejudicial to revenue – Mismatch of disclosure of receipts -Income-Tax Return and Form 26AS — Assessee duly filing reply with necessary evidence — Assessing Officer sending proposal to Principal Commissioner on same issue — Amounts to miscarriage of justice- Revision order was quashed . [S. 154, Form , 26AS .]

The Tribunal held that the Assessing Officer ought not to have forwarded the proposal to the Principal Commissioner/Commissioner for revision of his own order if remedy was available with the Assessing Officer to rectify his mistake under section 154. The Principal Commissioner ought to have applied his own mind independently instead of initiating proceedings under section 263. It amounted to a miscarriage of justice. Revision was quashed . (AY.2013-14)

Gurfateh Films and Sippy Grewal Productions (P.) Ltd. v. PCIT (2022)95 ITR 456 (Amritsar)(Trib)

S. 263 : Commissioner - Revision of orders prejudicial to revenue – Agricultural land - Assessing Officer accepting valuation report furnished by assessee — Failure to follow mandatory provisions of law – Revision is justified [[S. 50C, 56(2)(vii) (b)]

Held that the Assessing Officer not following the mandatory provisions of law would render the assessment order erroneous and amenable to the jurisdiction under section 263 of the Act. The contention of the assessee that it was agricultural land and did not come within the purview of section 56(2)(vii)(b) was not sustainable because whether the lands in question were agricultural was not pleaded either before the Assessing Officer or before the Principal Commissioner, the assessee himself had admitted the applicability of the provisions of section 56(2)(vii)(b) by submitting the valuation report, and an issue concluded against the assessee in the original assessment proceedings could not be agitated in revision proceedings. Revision is justified.(AY.2015-16)

Minakshi Shivkumar Bansal (Mrs.) v. PCIT (2022)95 ITR 11 (SN) (Pune) (Trib)

S. 263 : Commissioner - Revision of orders prejudicial to revenue -Buyback transactions –Deemed dividend – Reduction of share capital- Non application of mind -

DTAA -India – Singapore- Revision order is up held . [S. 2(22) (d), 45 , 92CA(3), 115O , 144C, 160, 163]

The Tribunal held that the issue which has been racked up by Ld. Pr. CIT in the revision order was never the subject matter of examination either by Ld. TPO or by Ld. AO during the course of regular assessment proceedings. The queries raised by lower authorities during the course of regular assessment proceedings and the assessee's replies thereto do not address the issue as highlighted by Ld. Pr. CIT in the order. The Ld. Pr. CIT has flagged a pertinent issue and fully justified as to how the assessment order was erroneous as well as prejudicial to the interest of the revenue. Upon perusal of assessment orders, the Tribunal found that this issue was never delved into by Ld. AO or Ld. TPO and there was complete non-application of mind on the sated issue. Accordingly the observation made by Ld. Pr. CIT in the order could not be faulted with. The revision jurisdiction is perfectly valid and justified. (AY. 2013 -14)

Madura Coats P. Ltd v. PCIT (2022) 95 ITR 70(SN) (Chennai)(Trib)

S. 263 : Commissioner - Revision of orders prejudicial to revenue – Carry forward of long term capital loss - Exempt income – Revision order was quashed . [S. 10(38), 74 (1)(b), 74(1)(c)]

Held that assessee is trading in shares and securities, which were exempted from tax under section 10(38) of the Act, therefore the capital gain exempted from tax, will not form part of total income and it is also not considered for set off of long term capital losses. Therefore, stand taken by the assessing officer that assessee should not utilize the exempt income to set off the losses, is correct. Since the exempt income does not form part of the total income, therefore, it should not be considered for set off losses and therefore, order passed by the assessing officer is neither erroneous nor prejudicial to the interest of revenue. Revision order was quashed . (AY. 2013 -14)

Pankaj Kishorchandra Desai v. PCIT(2022) 95 ITR 76 (SN)(Surat)(Trib)

S. 263 : Commissioner - Revision of orders prejudicial to revenue -Loss on sale of shares – capital loss or speculation loss – Revision justified -Block of assets – Depreciation – Project kept ready to use – Revision is not justified . [S. 32 , 43(5)]

Held that even though the quantitative details of the shares traded in by the assessee were reflected in the audit report filed by the assessee with his return, there was nothing on record to show that any inquiry whatsoever was made by the Assessing Officer to ascertain whether the loss claimed by the assessee on sale of shares was in the nature of capital loss or speculation loss. The Assessing Officer had not called for relevant details to ascertain the exact nature of transactions effected by the assessee in shares or futures. Thus there was an error in the order of the Assessing Officer which was prejudicial to the interests of the Revenue. Held that an individual item of plant and machinery loses its identity once it enters the block and the user condition is not required to be satisfied vis-à-vis every item of plant and machinery for claiming depreciation in respect of the entire block. The claim of the assessee to depreciation on plant and machinery pertaining to the Andhra project and earth-work project was rightly allowed by the Assessing Officer .(AY.2009-10)

Nikul J. Patel v. CIT (2022) 95 ITR 50 (SN)(Ahd) (Trib)

S. 263 : Commissioner - Revision of orders prejudicial to revenue -Invalid re-assessment or void assessment proceedings- Long term capital gain- Order of revision is bad in law [S. 45, 143(3), 147 , 148]

Assessee's assessment was reopened on the basis that he has shown long-term capital gain from the sale of shares of a penny stock company i.e., CI Ltd. In his reply, assessee submitted before the AO that he has not earned any exempt LTCG from the sale of shares of CI Ltd., and on contrary has disclosed STCG from sale of shares of the said scrip in his original return. AO accepted the income returned by him as such. In light of above factual background, the Tribunal held that the very basis for reopening of the case of the assessee by the AO was absolutely misconceived and incorrect. As the reassessment order passed by the AO under s. 143(3) r. w. s. 147 is in itself based on invalid assumption of jurisdiction by the AO, the same could not have been revised by the Principal CIT. As regards the failure on the part of the AO in not carrying out necessary verifications, when the very foundation for assumption of jurisdiction by the AO is found to be misconceived and fallacious;it was not permissible for him to have proceeded any further and gathered the information i.e.., details of purchase and sales of shares, number of shares, copy of Demat account, transactions of the assessee with broker, manner in which the shares offered by right issues were purchased from the broker, genuineness of the transactions, etc.When the very foundation of impugned revisional proceedings i.e., the reassessment order passed by the10 u/s. 143(3) r. w. s. 147 is in itself based on an invalid assumption of jurisdiction by the AO and thus, not sustainable in the eyes of law, the Pr. CIT could not have assumed jurisdiction under s. 263 and validated the said reassessment order by restoring the same to the AO with a direction to reassess the income of the assessee afresh. Therefore, the order passed of the Pr.CIT under s. 263 was set aside (AY. 2011-12)

Pradeep Dattatraya Banginwar v. PCIT (2022) 213 DTR 89 / 217 TTJ 246(Nag)(Trib)

S. 263 : Commissioner - Revision of orders prejudicial to revenue -
Lack of enquiry – Acceptance in subsequent year cannot hold water as assessment order of year under consideration is to tested on the parameter of ingredients of s. 263 – Order u/s. 263 upheld [S. 142(1), 143(3)]

Notice u/s 142(1) was issued by the AO regarding issue of share capital. Assessee filed the confirmation of share application money received by the assessee along with the income-tax acknowledgement, balance sheet, capital account, P&L a/c and computation of total income of the investor. Other than this, no enquiry was made by the AO. Even the notice u/s. 142(1) and reply thereto by the assessee was not with respect to the issue of shares at premium. There was no communication between the AO and the assessee regarding the said issue. Valuation of the shares was not at all discussed. Tribunal held that Reading to the assessment order clearly shows that the AO has not at all applied his mind that there was an issue of shares during the year at premium. Further, while valuing the shares as on 31st Dec., 2013, the valuer has taken share application money as shareholders' funds and therefore, the value

of number of shares (existing) have gone up. If the share application money was included in the net worth of the company, then the denominator should also be increased by the number of shares representing the share application money. Assessee has not increased the number of equity shares representing the share application money while working out the fair market value of each share. Thus, the valuation made by net assets method is flawed. Argument of the assessee that in subsequent years' assessment proceedings, the AO has accepted the valuation of Rs. 400 per share cannot hold water as the assessment order of this year is required to be tested on the parameters of ingredients of s. 263. Therefore, the order passed under s. 143(3) by the AO is erroneous insofar as prejudicial to the interest of Revenue in (1) not at all examining the issue of share premium, (2) accepting share valuation report as it is without examining it and (3) accepting flawed valuation of shares by net assets method by allowing inclusion of share application money pending allotment in net worth/ Thus, the order of the Principal CIT passed u/s. 263 was upheld. (AY. 2014-15)

Privilege Industries Ltd. v. PCIT (2022) 220 TTJ 162 / 220 DTR 114 (Mum)(Trib)

S. 263 : Commissioner - Revision of orders prejudicial to revenue - Lack of proper enquiry – Two sets of finding by PCIT self-contradictory – Revision is held to be valid .

The Tribunal held that there are two sets of findings by the ld PCIT and in the first set of findings, it has been held that it is a case of lack of enquiry or no enquiry on part of the Assessing officer and in the second set of findings, it has been held that there has been failure on the part of the Assessing to make proper enquiries and verification. It can either be a case of lack of enquiry on part of the AO or where the enquiries have been conducted by the AO, proper enquiries have not been conducted by the AO and therefore, these two set of findings by the ld PCIT as self-contradictory. It is not a case where no enquiry has been conducted by the Assessing officer. The Assessing officer has called for the information/documentation to verify the claim of the assessee, has thereafter called for the information from the assessee's broker through whom the transaction. It is therefore clearly not a case of no enquiry or lack of enquiry and the findings of the ld PCIT were set-aside. (AY. 2016 -17)

Rajat Gupta (HUF) v. PCIT (2022) 220 TTJ 447 (Chd)(Trib)
Sunita Gupta v . PCIT (2022) 220 TTJ 447 (Chd)(Trib)

S. 263 : Commissioner - Revision of orders prejudicial to revenue -Non consideration of reply to show cause notice – Twin Condition of error in the order and said order which can be said prejudicial to the interest of the Revenue, have not been met – Revision order was quashed . [S. 143(3)]

Tribunal quashing the order u/s. 263 held that the exercise of Revisionary Powers in the facts of the present case cannot be upheld. The Revisionary Powers in the facts of the present case have been exercised mechanically and in undue haste without even caring to address the assessee's reply. The fact that patently on the face of the record it is an order passed in undue haste is further tainted by the fact that no effort was made by the ld. PCIT to give the assessee an effective hearing. The fixing of the hearing in the peculiar facts and circumstances of the present case where the Show Cause Notice dated 23.02.2022 issued thereafter fixing the hearing on 04.03.2020 patently was a rhetoric, meaningless exercise. Admittedly, reasonable time was not made available to the assessee to put in an effective hearing. Onerous responsibility to provide an effective and fair hearing was treated like a meaningless exercise of merely ticking the box. The exercise of Revisionary powers cannot be allowed to be

exercised whimsically or arbitrarily. ld. PCIT was conscious of the fact as to why the specific case was selected for scrutiny under CASS. The ld. PCIT also had the benefit of queries raised by the AO and the replies of the assessee. A mechanical exercise of revisionary powers u/s 263 by the Revisionary Authority by merely citing the Audit Objection cannot be said to be a valid exercise of Revisionary Powers. (AY. 2015-16)

Rajinder Chauhan v. PCIT (2022) 219 TTJ 1017 / 98 ITR 610 (Chd)(Trib)

S. 263 : Commissioner - Revision of orders prejudicial to revenue – Bogus sales - Issue is not considered and decided by the CIT(A)- Revision is valid [S. 250]

During the course of reassessment proceedings; the AO made addition of 25% of bogus sales. The Assessee had preferred an appeal before the CIT(A) which was pending. Meanwhile, the PCIT invoked jurisdiction under section 263 on the basis that the AO made addition of only 25% of bogus transaction without any basis which was without any verification/enquiry. According to PCIT entire 100% of bogus transaction ought to have been added. Assessee pleaded that PCIT had no power to invoke revisionary jurisdiction because he had filed an appeal against the Assessment Order; also the AO had duly examined the issue of bogus sales.

Held that power under section 263 extends to all such matters which are not considered and decided in appeal. Thus, only when some issue is decided in appeal by CIT(A) in an appeal against the Assessment Order; such issue cannot be subject matter of revision under section 263. Since the Appeal was still pending it cannot be said that the CIT(A) had 'considered and decided' the impugned issue. Accordingly, PCIT had the jurisdiction to invoke provision of section 263 over the said issue.

The PCIT had pointed out several discrepancy in the Assessment Order. Further, it was observed that even though the Assessee had filed required details; however, the AO had not made property inquiry/verification from his side upon the same. Accordingly, it was held that PCIT had validly invoked revisionary proceedings under section 263. (AY. 2011 -12)

Om Industries v. PCIT (2022) 217 DTR 230/ 99 ITR 422 (Jaipur)(Trib)
JR Industries v. PCIT 2022) 217 DTR 230/ 99 ITR 422 (Jaipur)(Trib)
Vikas Oil Products v. PCIT 2022) 217 DTR 230 / 99 ITR 422 (Jaipur)(Trib)

S. 263 : Commissioner - Revision of orders prejudicial to revenue – Enquiries were made during assessment proceedings - No discussion in the assessment order – Revision is not valid .[S. 45 , 54, , 54EC , 54F]

Held that the Assessing Officer has accepted the deduction after making necessary enquiries and verification, merely because there is no discussion in the assessment order, revision is not valid. (AY. 2015 -16)

Surjeet Singh v. PCIT (2022) 219 TTJ 982(Chd)(Trib)

S. 263 : Commissioner - Revision of orders prejudicial to revenue -PCIT order based on assumptions and irrelevant material- Order of PCIT revising AO order set aside.[S. 133(6)]

The assessee traded on the NSE in F&O and showed a net profit of 17lakhs~. However, pursuant to summons u/s 133(6) issued to the assessee's broker information collected was that net profit was Rs. 47lakhs. ITAT held that the figure is based without any material on record and on assumptions and reconciliation done by the assessee is not taken into account. Hence the order of PCIT was quashed. (AY. 2016-2017)

Sunita Gupta v. PCIT (2022) 220 TTJ 447 (Chd)(Trib)

S. 263 : Commissioner - Revision of orders prejudicial to revenue -Gross profit estimated – Bogus purchases and sales – Revision order was quashed . [S. 143(3)]

The ITAT held that during the course of assessment proceedings the assessee had furnished the detailed explanations for the transactions recorded in the seized materials, that the AO has considered the entries noted in the seized materials and on that basis, the gross profit has been estimated, that the assessee could not have sold the materials without purchasing them, that only profit element is assessed – pragmatic and possible view taken by the AO which could not be termed as absence of any enquiry or verification so as to permit the PCIT to assume the jurisdiction u/s 263 of the Act . The revision orders passed by the PCIT were set aside and the appeals of the assessee allowed. (AY. 2013 -14, 2015 -16)

Sree Shivalingeswara Arecanut Traders v . PCIT (2022) 209 DTR 32 / 215 TTJ 123 (Bang) (Trib)

S. 263 : Commissioner - Revision of orders prejudicial to revenue – Remuneration – Partnership deed – Allowable as per income tax Act – Maximum of Rs . 24 lakhs each per annum- Revision is not valid .[S. 40(b)(v)]

The assessee had mentioned in its partnership deed that the partners shall be entitle to draw salary to the extent allowable under income -tax Act but shall be drawing salary to maximum of Rs 24 lakhs each per annum . The assessee claimed 36 lakhs of remuneration paid to its partners at the rate of Rs . 12 lakh each under section 40(b) of the Act . The Assessing Officer allowed the deduction. The Commissioner revised the order on the ground that remuneration of partners was not quantified in the partnership deed . On appeal the Tribunal held that view of the Assessing Officer being a plausible view could not be considered as erroneous or prejudicial to interest of the Revenue . (AY. 2015 -16)

H.R. International v. PCIT (2022) 97 ITR 129 (Amritsar)(Trib)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Remuneration is allowable under provisions of Income-tax Act-Remuneration to partners-Revision is not valid [S. 40(b)(v)]

Assessee, a partnership firm, claimed deduction in respect of remuneration Rs. 36 lacs paid to three partners at rate of Rs. 12 lacs each. In partnership deed it was mentioned that working partners shall be entitled to draw salary from firm to extent allowable under provisions of Income-tax Act but shall be drawing salary to maximum of Rs. 24 lacs each per annum. Assessing Officer allowed partners' remuneration under section 40(b)(v) of the Act. Commissioner revised the order. On appeal the Tribunal held that in partnership deed mentioned that drawing power of salary was Rs. 24 lacs per annum for each partner and more than salary Rs. 24 lacs will be disallowed as per section 40(b)(v) and hence it could not be

said that specific salary was not quantified. View of Assessing Officer being a plausible view his order could not be considered erroneous or prejudicial to interest of revenue. (AY. 2015-16)

H.R. International. v. PCIT (2022) 97 ITR 129 / 197 ITD 53 (Amritsar) (Trib.)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Investment in new plant or machinery-Assets acquired by it before 1-4-2013 but installed after financial year 2013-14-Deduction was allowed after application of mind-Revision is not valid [S. 32AC]

Assessee company, engaged in business of manufacture and sale of automotive components, claimed deduction under section 32AC in respect of investment made by it in new plant and machinery-Assessing Officer allowed same.Commissioner passed the revision order on the ground that deduction under section 32AC was not allowable on plant & machinery (assets) purchased prior to 1-4-2013 as provisions of section 32AC requires that new asset should not only be installed during or after financial year 2013-14 but same should also be acquired during or after financial year 2013-14. Tribunal held that since Assessing Officer had taken one of possible views in allowing deduction under section 32AC based on application of mind and Commissioner had not brought any material on record to show that such view taken was contrary to law, Commissioner was not justified in setting aside the order. (AY. 2013-14)

Bosch Ltd. v. CIT LTU (2022) 197 ITD 160 / 98 ITR 1 (SN) (Bang) (Trib.)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Permanent establishment-Non-levy or short levy of taxes-Amount paid to dependent agent at arm's length remuneration for services performed-Revision is not valid-.-DTAA-India-Malaysia [S. 9(1)(i), Art, 5, 7]

Held that non-levy or short levy of taxes on hypothetical profits of DAPE, independent of taxability of dependent agent, could not be said to be prejudicial to interest of revenue, as long as dependent agent had been paid an arm's length remuneration for services performed. (AY. 2017-18)

MFE Formwork Technology Sdn Bhd. v. DCIT (IT) (2022) 197 ITD 282/ 219 TTJ 450 (Mum) (Trib.)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Revision order is quashed.[S.80IB, 143(3), 153A]

A search was carried out under section 132 upon assessee and a notice was served under section 153A. In response to notice the assessee filed the return. Assessing Officer passed assessment under section 153A read with section 143(3) of the Act. PCIT revised the order on the ground that the Assessing Officer did not conduct proper enquiry before allowing deduction claimed by assessee under section 80-IB of the Act. Held that as Tribunal had quashed assessment order dated 13-12-2017, order passed by Commissioner also quashed. (AY. 2010-11)

Salarpuria Properties (P.) Ltd. (2022) 197 ITD 490 (Kol) (Trib.)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Depreciation-Lease of assets-Operating lease and finance lease transactions-lessee only had right to use vehicles-Entitle depreciation-Revision is not valid-Method of accounting-Estimate of income-Excess interest spread (EIS)-Revision is not valid-Chargeable in the year of receipt [S. 2(28A),32, 143, 145]

Assessee is a NBFC which was engaged in asset financing business and finances mainly against purchase of vehicles by way of operating lease and finance lease transactions. Assessee claimed depreciation on assets which were in operating and finance lease. AO allowed the claim of depreciation. PCIT passed the revision order. Held that the assessee is in the business of leasing and vehicles leased out were part of its business and principal component of finance lease rentals therefrom was offered for tax. Since both conditions in section 32 were complied with, accordingly the revision is not valid. Held that excess interest spread (EIS) receivable by assessee would be a contractual agreement and not an interest receipt as defined under section 2(28A),thus, ICDS-IV would have no applicability and tax treatment of such income in form of EIS would be governed by general principles under head business income as and when received by assessee which was to be accounted in accordance with RBI Circulars. Revision is not valid. (AY. 2017-18)

Poonawalla Fincorp Ltd. v. PCIT (2022) 100 ITR 151 / 197 ITD 590/(2023) 221 TTJ 387 (Kol) (Trib.)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Co-operative societies-Deposits against loans-Not filed appeal against the assessment order-Revision order is quashed.[S. 56, 80P]

Assessee, co-operative society, is engaged in business of providing long-term finance to its agricultural farmer members. It received certain deposits from said members against loans sanctioned to them and deposited same with two co-operative banks, i.e. WBSCARD and HDCCB. Assessing Officer held that assessee had earned income from fixed deposit in HDCCB bank and made additions by treating it as income from other sources under section 56. PCIT passed the revision order on ground that since dividend or interest received by any co-operative society from its investment in any other co-operative society would be taxable under section 56, thus, deduction pertaining to interest received from WBSCARD and HDCCB bank, which were co-operative banks, was not eligible under section 80P(2)(a)(i). Held that the Assessing Officer after undertaking requisite inquiries had taken one of plausible views on claim of assessee under section 80P by disallowing amount received by assessee as interest on deposits and assessee did not go into appeal against said assessment order. Revision order is held to be erroneous and quashed. (AY. 2017-18)

Arambagh Co-operative Agriculture and Rural Development Bank Ltd. v. ITO (2022) 197 ITD 695 (Kol.) (Trib.)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Survey-Income surrendered-Business income-Tax on specified income-Order is not erroneous.[S, 68, 69 to 69D, 115BBE, 133A]

During course of survey, assessee surrendered certain amount of income. Assessing Officer accepted surrendered income as business income while completing assessment after scrutiny. PCIT invoked his revisionary jurisdiction under section 263 and set aside assessment order on ground that Assessing Officer had failed to enquire about source of income so surrendered during course of survey and same was covered as per provision of sections 68, 69, 69A, 69B, 69C and 69D read with section 115BBE. Held that since PCIT himself was not clear about applicability of relevant provisions and in same breath held Assessing Officer to task by not invoking said provision, said revisionary order under section 263 could not be sustained in eyes of law.Since view taken by Assessing Officer was after due application of mind and after duly examining and taking into consideration all evidences on record, same could not be held as erroneous in eyes of law. (AY. 2017-18)

Gandhi Ram. v. PCIT (2022) 197 ITD 677 (Chd) (Trib.)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Commission to non-Resident-Pendency of application before AAR-Revision is held to be not valid [S. 40(a)(i), 195]

Assessee made payment of certain amount towards commission to a non-resident payee. Assessing Officer disallowed said payment of commission under section 40(a)(i) and passed an assessment order. PCIT invoked revision jurisdiction on ground that an application regarding question of payment of TDS under section 40(a)(i) in respect of said commission payment made to non-resident entity was pending before AAR. Held that entire assessment order could not be set aside for reason that Assessing Officer should not have decided issue at all to extent it related to such commission payment by assessee. Further, since said commission payment made by assessee had already been added by Assessing Officer in order of assessment, there was no prejudice caused to interest of revenue. Order of Revision is quashed..(AY. 2015-16, 2016-17)
Think and Learn (P.) Ltd. v. PCIT (2022) 197 ITD 736 (Bang) (Trib.)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Search –Un explained expenditure-Cash paid to labour charges-No explanation was furnished-Revision is held to be valid [S. 69C, 132, 153A]

Assessment was framed making additions on account unexplained cash expenditure and unrecorded cash receipts.During assessment under section 153A read with section 143(3) pursuant to search certain specific queries were raised by Assessing Officer with respect to such cash payments made by assessee however, assessee did not turn up to tort-out any explanation. Commissioner revised the order. Tribunal held that apparently while framing assessment pursuant to search Assessing Officer missed out amount claimed to have paid by assessee as labour charges. On facts, PCIT was justified in invoking revisionary power under section 263 as order passed by Assessing Officer was erroneous and prejudicial to interest of revenue. (AY. 2014-15)
Shrigopal Rameshkumar Sales (P.) Ltd. v. ACIT (2022) 196 ITD 107 (Nag) (Trib.)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Club entrance fee-Capital receipt-Revision is held to be not valid.[S. 4, 143(3)]

Held that for past 12 years i.e. from the assessment year 2004-05 onwards had been receiving an entrance fee and had been treating the same as its capital receipt, and all these years, the stand of the assessee had been accepted by revenue. Without bringing on record any material change in facts from previous years, Principal Commissioner had erred in passing the revision order. (AY. 2015-16)
Sports Club of Gujarat Ltd. v. PCIT (2022) 195 ITD 373 (Ahd) (Trib.)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Government grants-Accumulation of income-Doctrine of consistency-Accumulation of 15 %-Revision is not valid.[S. 11(1)(a), 12]
Assessee declared nil income in return and same was accepted by Assessing Officer. Principal Commissioner held that government grants were given with specific directions, with no scope of savings and could not be treated as voluntary in nature and passed the revision order on ground that said grant would not be eligible for purpose of accumulation at rate of 15 per cent and remanded matter to Assessing Officer. Held that since in earlier years, revenue had accepted same as income of assessee as being eligible for accumulation under

section 11 same was also to be accepted in current year following doctrine of consistency. Order of Revision without calling the records and application of mind. Order of Revision is set aside.(AY. 2015-16)

Gujarat State Lion Conservation Society. v. CIT (2022) 196 ITD 172 (Rajkot) (Trib.)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Carry forward and set-off of business losses-Set-off of brought forward losses against short term capital gains-Leasing business-As per section 72(1)(i) assessee is entitled to set-off brought forward business loss against income which has attributes of business income even though same is assessable to tax under head other than profits and gains from business-Revision order is not valid [S. 72]

Assessee is engaged in business of developing and leasing out commercial properties either on short term or long term basis. Activity of leasing such constructed spaces was undeniably its core business activity. During year, assessee adjusted brought forward business losses under head 'profits and gains of business' against 'short-term capital gain' arose from leasing of properties. Assessing Officer allowed same PCIT revised the order on ground that set-off of brought forward business loss of earlier years against short-term capital gain of relevant year was irregular and, accordingly there was under charge of tax. Tribunal held that properties constructed by assessee were its 'business asset' reflected as 'fixed asset' Undisputedly, income derived from leasing these fixed assets on short-term basis had all along been taxed as 'business income'. Since income which was assessed by way of short-term capital gain bore character of profits or gains derived from leasing business of assessee, loss assessed under head 'profits & gains of business or profession' in preceding years was allowed to be brought forward and set-off against such 'short-term capital gain' derived from leasing business. (AY. 2017-18)

Infinity Infotech Parks Ltd. v. PCIT (2022) 196 ITD 316 (Kol) (Trib.)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Document Identification No. (DIN)-Revision order passed manually without Document Identification No. (DIN) in its body-Held to be invalid and deemed to have never been issued.

Held that in view of CBDT's Circular No. 19/2019, dated 14-8-2019, revision order under section 263 issued manually without Document Identification No. (DIN) is invalid and deemed to have never been issued if written approval of Chief Commissioner/Director General of Income-tax is not obtained in prescribed format for such manually issued order. Order passed without a DIN, order passed by Commissioner was invalid and deemed to have never been issued. (AY. 2016-17)

Tata Medical Centre Trust. v. CIT (E) (2022) 196 ITD 302/ (2023) 222 TTJ 249 (Kol.) (Trib.)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Cash deposit in the Bank-Un explained money-AIR information flagged-Non-filer of returns-Revisionary powers could not be permitted to be exercised on suspicions and inferences-Revision order was quashed.[S.44AD, 69A]

On basis of AIR information flagged, Assessing Officer had noticed that deposits had been made by a non-filer of returns and accordingly, issued notice to assessee to explain deposits etc. In response thereto, return was filed. Assessing Officer issued notices to assessee to

explain deposits vis-à-vis returned income. Assessee submitted that during year under consideration it was doing trading of cloth and amount deposited in cash was sale proceeds of business which had been declared in return under section 44AD. After discussion and keeping in view information filed by assessee, returned income of Rs. 2.09 lakhs was accepted.Principal Commissioner passed order under section 263 on ground that amount of cash deposit of Rs. 24.79 lakhs in account of assessee was unexplained cash deposit. Tribunal held that source of deposit was fully enquired into and explanation offered by assessee was considered and only thereafter assessment order was passed by Assessing Officer. No fact or evidence had been referred to by Principal Commissioner to show that assessee was engaged in any nefarious activity from which amounts were deposited and withdrawn. There was no fact referred to show that Assessing Officer had committed an error in accepting claim of assessee. Accordingly revision order was quashed with the finding that revisionary powers could not be permitted to be exercised on suspicions and inferences. (AY. 2011-12)
Pawan Kumar. v. ITO *(*2022) 196 ITD 378/ 220 TTJ 86/ 219 DTR 267 (Chd) (Trib.)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Consideration as per sale deed and whether tolerance limit of 10 per cent for difference between sale consideration as per sale deed and SDV is to be considered or not are debatable issues-Revision is bad in law [S. 56(2)(vii)(b)]

Assessee is engaged in construction of residential and commercial buildings. Assessee purchased a property for which sale deed was registered for a sum of Rs. 3.25 crores. During scrutiny, Assessing Officer accepted return filed by assessee and passed assessment order under section 143(3).-Principal Commissioner on perusal of assessment order noticed that guideline value of property purchased by assessee was fixed at Rs. 3.50 crores by Stamp Valuation Authority (SVA). He invoked revisionery proceedings and directed Assessing Officer to make additions as per section 56(2)(vii)(b)(ii) of Rs. 25 lakhs which was difference between purchase price as per consideration recorded in sale deed and SDV. Assessee contended that difference in valuation was marginal and same was to be ignored as per section 56(2)(x)(b)(A). held that whether section 56(2)(vii)(b) is to be invoked to make addition of excess of SDV over consideration as per sale deed and tolerance limit of 10 per cent for difference between sale consideration as per sale deed and guideline value fixed by Stamp Valuation Authorityis to be considered or not are debatable issues, order passed by Assessing Officer taking one of possible view could not be held as erroneous. Revisionary proceeding was quashed. (AY. 2015-16)
Shanmuga Sundaram Govindaraj. v. ACIT (2022) 196 ITD 576/ 218 TTJ 988/ 216 DTR 329 (Chennai) (Trib.)
S. 263 : Commissioner-Revision of orders prejudicial to revenue-Book profit-New method of accounting-Forex gain or losses-No enquires made by the AO in the assessment proceedings-Revision is held to be valid [S. 115JB]
The Assessee adopted Accounting Standards (Ind AS) for the preparation and presentation of Financial statements. Pursuant to the adoption of Ind AS, the business of the company had been regarded to be in nature of the Service Concession Agreement (SCA). Since the tax on Book Profits under section 115JB was higher, the assessee paid taxes under section 115JB. The Assessing Officer accepted returned income and finalized the assessment. Commissioner revised the assessment on the ground that the assessee had not made any adjustments to book profits with respect to MAT provisions however, forex gains/losses had been reduced for computing taxable income under normal provisions of Act. On appeal the Tribunal held that non-consideration of a pertinent issue with due application of mind would make the order

erroneous and the same would prejudice the interest of revenue, therefore, revisional order is held to be justified. (AY. 2016-17)

TAQA Neyveli Power Company (P.) Ltd. v. PCIT (2022) 195 ITD 775/ 220 TTJ 1114 /(2023) 221 DTR 289 (Chennai) (Trib.)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Capital gains-Investment in a residential house-Followed direction of Commissioner-Subsequent revision order was quashed.[S. 54F, 143(3)]

Assessee sold two sites to two different persons and purchased a residential house. Assessee claimed exemption under section 54F. Assessing Officer allowed.-Subsequently, Principal Commissioner invoked revision under section 263 on ground that assessee owned two residential properties during year and had also offered property income from same, he passed an order under section 263 directing Assessing Officer to examine eligibility of assessee for claiming exemption under section 54F. Assessing Officer, after issuance of notice and on physical verification of residential properties, opined that one property was not residential house but was a small portion of construction which was let out and income from same was offered. He passed an order under section 143(3), read with section 263 holding that assessee was eligible to claim exemption under section 54F of the Act. Thereafter, Principal Commissioner passed an order under section 263 setting aside said assessment order as erroneous and prejudicial to interest of revenue and disallowed exemption under section 54F observing that same was allowed without making inquiries or verification, and without following directions of Commissioner in earlier order under section 263 with regard to issue of exemption. Held that the Assessing Officer had followed all directions given by Principal Commissioner while passing said assessment order under section 143(3) read with section 263, impugned subsequent revision order passed by Principal Commissioner setting aside said order was quashed. (AY. 2013-14)

Karumanchi Nalini. (Dr.) v. ITO (2022) 196 ITD 673 (Vishakha) (Trib.)

S. 263 : Commissioner-Revision of orders prejudicial to revenue –Specific domestic transaction-Order passed without referring domestic transaction to TPO-Section

92BA(i) was unconditionally omitted without a saving clause-Revision is not valid.[S. 92BA(i))]

Held that since section 92BA(i) was unconditionally omitted without a saving clause in favour of pending proceedings and it does not say that pending proceedings under clause (i) of section 92BA would continue in future even after its omission on 1-4-2017, Commissioner ought not to have proceeded under section 263 of the Act.(AY. 2016-17)
Automark Industries (India) (P.) Ltd. v. PCIT (2022) 194 ITD 172 (Nag) (Trib.)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Bank deposit-Senior citizens-Cash deposited out of past savings-All explanations and documents from assessee had been scrutinized and examined by Assessing Officer, in such scenario order of assessment could not be held to be erroneous and prejudicial to interest of revenue. [S. 68]

The assessee had deposited higher amount in cash in bank as against gross turnover of business. Assessing Officer held that part of cash deposit was not made from disclosed source as assessee did not file supporting evidences and made addition under section 68 of the Act. CIT revised the order. On appeal the Tribunal held that since all explanations and documents from assessee had been scrutinized and examined by Assessing Officer, in such scenario order of assessment could not be held to be erroneous and prejudicial to interest of revenue. (AY. 2015-16)
Shergil Harjit. v. PCIT (2022) 194 ITD 218 (Pune) (Trib.)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Hospitals-Philanthropic purposes-Interest income from investment-Incurred only 12 per cent of receipts for philanthropic purposes and accumulated 88 per cent of its receipts-Eligible for exemption-Revision is held to be not valid [S. 10(23C)(iiiae)]

Assessee trust was running a medical dispensary wherein it was providing free medical treatment to patients and annual income of assessee trust was out of interest income from investment which had been made of surplus lying with it. Assessing Officer allowed exemption to assessee trust under section 10(23C)(iiiae)-CIT(E) held that assessee society had incurred only 12 per cent of receipts for philanthropic purposes and accumulated 88 per cent of its receipts, hence, there was no nexus between income earned and dispensary run by assessee society, and thus, assessee society was not eligible for exemption under section 10(23C)(iiiae) of the Act. On appeal the Tribunal held that under provisions of section 10(23C)(iiiae), there was no limit prescribed for application of receipts and accumulation of receipts.Therefore, there being no allegation that assessee trust was involved in any activity for profit or did not exist for philanthropic purposes, assessee Trust was within its rights to accumulate receipts as per its requirement and thus, would be eligible for exemption under 10(23C)(iiiae) of the Act. (AY. 2017-18)
Swasthya Sewa Sansthan. v. CIT (E) *(*2022) 194 ITD 444 (Kol) (Trib.)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Higher rate of depreciation-Non-mentioning of specific reasons for accepting explanation of assessee by AO in assessment order-Revision is not valid [S. 32]
Held that merely because the Assessing Officer did not write specific reasons for accepting the explanation of the assessee cannot be reason enough to invoke powers under section 263, and non-mentioning of these reasons do not render the assessment order erroneous and prejudicial to the interest of the revenue. (AY. 2015-16)

Reliance Payment Solutions Ltd. v. PCIT (2022) 194 ITD 492 / 217 TTJ 153 / 212 DTR 297(Mum) (Trib.)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Transferred part of converted capital asset into stock-in-trade-failure to make enquiry-Revision is valid [S. 45, 48]

Assessee had transferred part of converted capital asset into stock-in-trade during relevant financial period and Assessing Officer failed to tax same in hands of assessee and no enquiry had been conducted by Assessing Officer during assessment proceedings. Commissioner revised the order. Tribunal held that it was a clear case of no enquiry and therefore, Commissioner validly assumed jurisdiction to review. Order of Commissioner is affirmed. (AY. 2015-16)

Kyori Infrastructure (P.) Ltd. v. DCIT (2022) 194 ITD 651 (Hyd) (Trib.)

S. 263: Commissioner-Revision of orders prejudicial to Revenue-AO failure to verify the genuineness of the lenders-Complete details not submitted by the assessee-Revision justified. [S. 133(6), 143(3), 147, 148]

The assessee was operating from Aurangabad and had accepted huge loans from certain parties, mainly from Kolkata and Mumbai. While passing the reassessment order under section 148 r.w.s 143(3), the AO mentioned that certain notices under section 133(6) had been issued to the lenders, and a few confirmations have been received. The Commissioner issued a notice under section 263, as the AO failed to verify their capacity and human probability regarding how the Kolkata-based parties came to be known to the assessee and advancing loans.

The Tribunal upheld the revision made by the Commissioner, as there was an utter failure on the part of the AO: first, not all replies were received, and still, the AO proceeded to frame the assessment accepting the lenders as genuine. Second, most of the parties had the same address that had not filed any confirmation during the Assessment proceedings. Further, on the confirmation received by some parties through the assessee, the AO did not consider it worthwhile to cause further enquiry even though massive amounts were transacted. Third, no prior business transaction with any of the parties. On going through the different sets of creditors, it emerges that the assessee allegedly received huge money running into several crores as loans from the parties based mainly in Kolkata and Mumbai, whereas it was operating from Aurangabad. Neither such companies were engaged in financing business, nor did the assessee have any prior business dealings with them. As the AO has not entirely verified the details of the lenders, the assessment order is erroneous and prejudicial to the interest of the Revenue, justifying the exercise of revisionary power by the Commissioner under section 263 of the Act. (AY. 2003-04)

Ajanta Infrastructure Ltd. v. CIT (2022) 216 TTJ 466/ 211 DTR 201 (Pune) (Trib)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-

Bogus accommodation entries-Revision on the basis of roving enquiries-CBDT circular on no set-off of loss against deemed income u/s 115BBE applicable w.e.f 1 April 2017-

Invocation of section 263 jurisdiction by the Ld. CIT is invalid-Income assessed remains same even pursuant to revision-Revision is not valid.[S. 56, 68, 115BBE 143(3)]

The AO made assessment under section 143(3) of the Act. During the year under consideration the assessee sold shares of two companies in whose case search and seizure operations were conducted and such companies were alleged to be involved in providing bogus accommodation entries. The Ld Pr. CIT invoked the provisions of section 263 of the Act on the ground that the order passed under section 143(3) of the Act was erroneous and prejudicial to the interest of revenue. The assessee preferred appeal against the order of PCIT.

The Tribunal observed that the Ld. CIT has not at all specified what more enquiry was required when, AO has made all the enquiries and all the details were supplied. It is not the case of Ld. PCIT that any defect was noted in this connection hence, the direction given by the Ld. PCIT in this case is simply to make further roving enquiries, which is totally unsustainable in law. The alternate contention of the assessee was that if the AO reassess the income pursuant to direction under section 263 of the Act and as the amount involved is assessed under section 68 of the Act, only effect will be that the income offered under business income would now be assessed under section 68 of the Act as income from other sources.

In this regards the Tribunal held that the assessment year under consideration is assessment year 2015-16, the CBDT circular referred by counsel of assessee which was on clarification regarding non-allowability of set off of losses against the deemed income under section 115BBE of the Act clearly provides that the amendment brought in by financial year 2016 in this regard is inserted with w.e.f. 1 April 2017 and assessee is entitled to claim set off against income determined under section 115BBE of the Act till the AY 2016-17. Hence, even if the section referred by the Ld. CIT is invoked the assessee will still be eligible for the set off as referred above and the income would be the same as assessed by the AO in the original assessment. It is a settled law that after the exercise of revisionary jurisdiction the income assessed remains the same, it cannot be said that the order of the AO is prejudicial to the interest of revenue held that Ld. CIT's jurisdiction is invalid set aside the order passed by Ld. CIT. (AY. 2015-16)

Kamal Vyas v. PCIT (2022) 216 TTJ 7 / 211 DTR 25 (Mum)(Trib.)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-When valid and lawful agreement is entered by the parties prior to 1 April 2014 but the property was registered after said date, provisions of the amended section 56(2)(vii)(b) would be inoperative and therefore an assessment order passed after due consideration of all facts but without invoking the provisions of the amended section 56(2)(vii)(b) cannot be said to be erroneous and prejudicial to the interest of the revenue.

During the year, the assessee had purchased a residential house property which was why her case was selected for scrutiny under CASS. The AO after considering the assessee's submission and on application of mind, found no malicious component to the purchase transaction. Accordingly, no addition was made to this regard. However, the CIT observed that the stamp duty value was significantly higher than the purchase consideration and therefore the AO ought to have made addition under the amended section 56(2)(vii)(b) and therefore the order passed by the AO was erroneous and prejudicial to the interest of the revenue.

On appeal by the assessee against the order passed under section 263, the Hon'ble Tribunal adjudicated the matter in favor of the assessee and held that where a valid and lawful

agreement was entered by the parties prior to 1 April 2014 but the property was registered after said date, the provisions of the section 56(2)(vii)(b), as it stood prior to its amendment, shall apply. Further, the pre amended law did not cover a situation where an immovable property was received by an individual/ HUF for a consideration (whether adequate or inadequate) less than the stamp duty valuation by an amount exceeding Rs. 50,000/-which was provided for by way of amendment by the Finance Act, 2014 and operative from 1 April 2014 (applicable from AY 2015-16 onwards). Reliance is also placed on the decision of the Hon'ble Ranchi Tribunal in the case of Bajranglal Naredi vs. ITO(2020) 203 TTJ 925 (Ranchi). Accordingly, assessment order passed after due consideration of all facts but without invoking the provisions of the amended section 56(2)(vii)(b) cannot be said to be erroneous and prejudicial to the interest of the revenue and consequently the order under section 263 was quashed. (AY. 2015-16)

Naina Saraf v. PCIT (2022) 216 TTJ 1 (UO) (Jaipur) (Trib)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Claim of set off of non speculative business loss against the profit of speculated business-Revision order is quashed.[passed by the PCIT u/s 263 of the Act is quashed.[S. 28 (i), 72, 73]

Held thatthe provisions of Section 28, 72 and 73 of the Act and held that the assessee was justified in claiming set off of brought forward non speculative business loss against the profit of speculative business and the assessment order passed by the AO is neither suffering from any error nor prejudicial to the interest of the revenue. Hence, the order u/s 263 passed by the Pr. CIT is quashed. (AY. 2016-17)

Puli Ashok Reddy v. PCIT(2022) 64 CCH 372/ 216 TTJ 977 /212 DTR 249 (Hyd)(Trib)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Bogus purchases-Addition of 12. 5% of alleged bogus purchases-Revision is not valid [S. 143(3)]

The AO assessed the income of the assessee by making the addition of 12.5% of alleged bogus purchases. PCIT passed the revision order directing to make entire bogus purchases. On appeal the Tribunal quashed the revision order. Referred the judgement in PCIT v. Paramshakhti distributors Pvt Ltd (ITA No. 413 of 2017) where in the Court held that only the profit element embodied in such purchases only brought to tax.(ITA No. 359/ Mum/ 2021 dt. 17-12-2021)

Nagardas Kanji Shah (2022) The Chamber's Journal-March-P. 115 (Mum) (Trib)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Compensation received under compulsory acquisition is not chargeable to capital gains-Revision is not valid [S. 45(5), Right to Fair Compensation and Transparency in Land Acquisition Act, 2013, S.96]

Assessee has received compensation under the Right to Fair Compensation and Transparency in Land Acquisition Act, 2003. The said amount was shown as exempt. In the

course of assessment proceedings the AO has accepted the same as exempt. PCIT in revision proceedings held that the said compensation is liable to tax as long term capital gains u/s 45(5) of the Act and set aside the assessment order. On appeal the Tribunal referred the CBDT Circular No 36 of 2015 dt. 25-10-2016 and held that compulsory acquisition is not chargeable to capital gains. Revision order was quashed.(ITA No. 131 /VIZ/ 2021 dt. 16-3-2022)(AY. 2016-17)

Mattapali Ram Kumar v. ACIT (2022) The Chamber's Journal-April-P. 103 (Vishakha)(Trib)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Capital gains-Agricultural land-Issue scrutinized in the assessment proceedings and under rectification proceedings-revision is bad in law [S. 45, 154]

The assessee sold agricultural land and claimed exemption in respect of long term capital gains. After considering the submission the exemption was allowed. The AO also initiated proceedings u/s 154 of the Act and dropped the proceedings. PCIT revised the order u/s 263 of the Act. On appeal the ITAT set aside the revision order of the PCIT.(ITA 44/ LKW/ 2021 dt. 17-5-2022)(AY. 2015-16)

Ishwar Dewlling Pvt Ltd v.PCIT (2022) The Chamber's Journal-July-P. 124 (Lucknow)(Trib)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-
Donation-CSR expenses-Donation to trust-Restriction under Explanation 2 section 37 does not apply-Revision is not valid.[S. 37(1),80G]

Held that the AO has allowed the claim under section 80G of the Act, in respect of donation to trust. Tribunal held that restriction of CSR expenses under Explanation 2 section 37 does not apply in respect to donation Trust, revision is not valid.(TS-1157-ITAT-2021 (Mum) (AY. 2016-17 (Dt..26-11-2021)

Naik Seafoods Ltd v.PCIT (2022) BCAJ-February-P. 38 (Mum)(Trib)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Penalty for under-reporting and misreporting of income-Revision proceedings held to be not valid merely for non initiation of penalty proceedings u/s 270A of the Act.[S. 270A]

The Assessing Officer assessed the income of the appellant by making addition as unexplained money u/s 69 of the Act. The PCIT passed the revision order on the ground that the AO has omitted to initiate penalty proceedings u/s 270A of the Act. On appeal the Tribunal held that in the absence of any findings in the assessment order regarding underreporting or misreporting of income, the PCIT cannot revise assessment order to initiate penalty proceedings. Revision order was quashed. Followed CIT v. Chennai Metro Rail Ltd (2018) 92 taxmann.com 329 (Mad)(HC) which is jurisdictional High Court instead of CIT.v Surendra Prasad Aggarwal (2005) 275 ITR 113(All)(HC).(TS-488-ITAT-2022(Chennai) (AY. 2017-18)(Dt. 17-3-2022)

Coimbatore Vaiyapuri Maathesh v.ITO(2022) BCAJ-August-P. 85 (Chennai)(Trib)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Transaction fee-Subject matter of appeal before CIT(A)-Original assessment reopened to tax profits earned on surrender of purchase pension policy-Return filed was accepted in reassessment proceedings-Reassessment becomes invalid-Revision is held to be not valid [S. 14A, 56, 143(3), 147, 148]

Allowing the appeal the Tribunal held that the revision was without jurisdiction because in effect, the entire investment transaction fees was the subject matter of disallowance and confirmation by the Commissioner (Appeals) under section 14A of the Act and the very same transaction was sought to be considered and added by the Principal Commissioner in revision proceedings under section 263 of the Act. The order passed by the Commissioner (Appeals) had become final. Under clause (c) of the Explanation to section 263(1) of the Act, a matter which has already been considered and decided by the Commissioner (Appeals) cannot be the subject matter of revision by the Principal Commissioner under section 263 of the Act. The Tribunal held that the Principal Commissioner was seeking to revise the order passed by the Assessing Officer under section 143(3) read with section 147 of the Act. In the reassessment proceedings, the Assessing Officer had not made any addition despite the fact that he had reason to believe that income had escaped assessment in the hands of the assessee which was to be taxed under section 56 of the Act. Hence, when the very basis of reasons recorded by the Assessing Officer was ultimately not added by the Assessing Officer in the reassessment proceedings, the primary reason to believe that income of the assessee had escaped assessment failed and such reassessment could not be treated as a valid order in the eyes of law. When an assessment framed by the Assessing Officer is unsustainable in the eyes of law, the invalid and illegal order cannot be subject matter of section 263 proceedings.(AY. 2011-12)

Aishwarya Rai Bachchan v. PCIT (2022) 194 ITD 272/ 94 ITR 49 (SN)(Mum) (Trib)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Employees' Stock option scheme expenses-Additional compensation-Revision is not valid-Book profit-Interest-Revision is valid.[S. 37 (1), 115JB(2)]

Held that the additional compensation cost had been rightly debited as expenditure by the assessee in the year of vesting, i. e., AY. 2012-13, in accordance with the Special Bench decision and the Principal Commissioner had invoked revisionary jurisdiction based on incorrect assumption of fact. Revision is not valid. As regards book profit the interest partook of the character of Income-tax and the Income-tax demand was to be added back while computing book profits under Explanation 1(a) to section 115JB(2). Therefore, the action of the Principal Commissioner in invoking revisional jurisdiction was upheld in this regard.(AY. 2012-13, 2013-14)

Ambuja Cements Ltd. v. CIT (LTU) (2022)94 ITR 13 (SN)/217 TTJ 498/ 215 DTR 215 (Mum) (Trib)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Cash credits-Share capital premium-Discharged the burden in original assessment proceedings-Revision is bad in law.[S.68]

Tribunal held that the AO on his second time conducted enquiry on the specific subject matter i.e., share capital and premium collected by the assessee-company. Therefore, the finding of the Ld. Pr. CIT that the AO has not conducted enquiry is incorrect and is flowing from suspicion only. The allegation/fault pointed out by the Ld. Pr. CIT that the Second AO failed to collect total facts also cannot be accepted for the simple reason that Ld. Pr. CIT has not spelt out in the impugned order what he meant by total facts or in the alternative when the assessee has discharged its onus, as required by the law in force. The Ld. Pr. CIT has exercised his revisional jurisdiction u/s. 263 without satisfying the condition precedent as stipulated in section 263 of the Act. Revision order is invalid and quashed. (AY. 2012-13)
Starpoint Construction (P.) Ltd *v*. PCIT (2022) 94 ITR 299 (Kol) (Trib)
S. 263 : Commissioner-Revision of orders prejudicial to revenue-Expenditure incurred towards spectrum is not an expenditure for acquiring right to operate telecommunication services but is an intangible asset eligible for depreciation u/s 32 of the Act-Revision is bad in law.[S. 32, 35ABB]
Held that queries raised by the AO by virtue of the numerous notices issued under section 142(1) of the Act and replies filed thereto by the assessee shows that discreet enquiry has been made by the AO in order to determine the issue as to the allowability of depreciation on "spectrum fee". Post which the AO has allowed the depreciation @ 25%, by treating the same as 'intangible asset' under section 32 of the Act. As such it is neither a case of non-application of mind on the part of the AO nor a case of inadequate enquiry. Hence, invoking revisionary jurisdiction by the Ld. PCIT under section 263 of the Act is not sustainable. On merit also the expenditure towards 3G Spectrum is not an expenditure for acquiring any right to operate telecommunications services. Even if 3G Spectrum was not applied or allotted, assessee could have still continued providing telecommunication services under the existing license. 3G Spectrum fees are merely for right to use a particular frequency/spectrum while providing telecommunication services. In view of the above, the provisions of section 35ABB of the act are not applicable to such payment. The assessee is thus entitled for claim of depreciation on merits. (AY.2015-16)
Vodafone Idea Ltd v. PCIT (2022) 94 ITR 562/217 TTJ 323 (Mum)(Trib)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Agricultural income-Mere audit objection or merely because another view is possible does not allow jurisdiction under the section, to claim the order of the AO as erroneous and prejudicial to the interests of the Revenue.
Held that the revision order is passed on the basis of objection by the audit wing of the department, there was no independent application of mind by the Ld. PCIT. The A.O. in the original assessment proceedings wherein the assessee had filed three replies. Therefore, the whole contention of the Ld. PCIT that there was no application of mind by the A.O. falls. Order of revision was quashed, relied on CIT v. Sohana Woolen Mills. (AY. 2015-16)
Surinder Pal Singh v. PCIT (2022) 94 ITR 458 (Chd)(Trib)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Lack of enquiry-Revision is valid-Deduction cannot exceed sum allowed in original assessment [S. 143(3)]

Held, that since there was lack of enquiry on the part of the Assessing Officer, the Assessing Officer was directed to re-examine the entire issues dealt with by the Principal Commissioner in accordance with law after giving adequate opportunity of being heard to the assessee without being influenced by the observations of the Principal Commissioner on the merits in his order. However, the Assessing Officer should not allow the deduction under rule 7A(2) in excess of the claim made in the original assessment order.(AY. 2015-16)

Karnataka Forest Development Corporation Ltd. v. PCIT (2022)94 ITR 31 (SN)(Bang)(Trib)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Lack of enquiry-Revision is valid-Deduction cannot exceed sum allowed in original assessment [S. 143(3)]

Held, that since there was lack of enquiry on the part of the Assessing Officer, the Assessing Officer was directed to re-examine the entire issues dealt with by the Principal Commissioner in accordance with law after giving adequate opportunity of being heard to the assessee without being influenced by the observations of the Principal Commissioner on the merits in his order. However, the Assessing Officer should not allow the deduction under rule 7A(2) in excess of the claim made in the original assessment order.(AY. 2015-16)

Karnataka Forest Development Corporation Ltd. v. PCIT (2022)94 ITR 31 (SN)(Bang)(Trib)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Interest on borrowed capital-Loans utilised for purchase of properties and assets-Revision is held to be not valid [S. 36(1)(iii)]

Held that after examination, the Assessing Officer had disallowed the interest expenses to the tune of Rs. 7,92,27,335. Once the Assessing Officer had examined the issue and had taken a possible view, the assessment was not liable to be reviewed. Revisional powers could not be invoked for the assumption of lack of inquiry.(AY. 2015-16)

Niagara Financial Consultants Pvt. Ltd. v. PCIT (2022)94 ITR 24 (SN)(Mum)(Trib)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Limitation-Order passed in consequence of direction of High court in writ proceedings-Order passed beyond period of twelve months-Assessing Officer did not have jurisdiction to frame assessment-Revision is bad in law.[S.92CA, 143(3) 144C, 153(5) 153(6), 260]

Held that that the order was passed in consequence of the direction contained in the order passed by the High Court in writ proceedings, which did not constitute an appeal or reference made under section 260 of the Act. Therefore sub-section (5) of section 153 of the Act was not applicable.That sub-section (6) of section 153 covered an order passed by the Assessing Officer in consequence of any finding or direction contained in an order by any court in a proceeding other than appeal or reference under this Act. In such case, the Assessing Officer was required to pass the order within twelve months from the end of the month in which the order had been received by the Commissioner. The Assessing Officer had issued fresh show-cause notice dated October 6, 2017 in consequence of the directions contained in the order passed by the High Court dated August 11, 2017, it could be inferred that the office of the Commissioner had received the order of High Court on or before the date of notice, i. e., October 6, 2017. Accordingly, the period of twelve months for completion of assessment began from the end of the month of October 2017 which ended on October 31, 2018. However, the order was passed on December 28, 2018 which was well beyond the date on which the proceedings got time barred. There was no infirmity in the order of the Commissioner (Appeals) that the Assessing Officer did not have the jurisdiction to frame the assessment after the limitation period had set in and therefore the assessment order passed by the Assessing Officer on December 28, 2018 was barred by limitation. The Principal Commissioner had interdicted with the assessment order passed by the Assessing Officer dated December 28, 2018 under section 143(3) read with section 144C of the Act, which had been held to be non est in the eyes of law. Therefore, the action of the Principal Commissioner was unsustainable since the assessment order dated December 28, 2018 itself was bad in law.Referred, Badrinath v. Government of Tamil Nadu AIR 2000 SC 3243.(AY.2012-13)

PCM Stresscon Overseas Ventures Ltd. v. PCIT (2022)93 ITR 682 (Kol) (Trib)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Loss-Set Off-Business or Speculation Loss-Income or loss from similar transaction held to be from business in earlier years-Change of opinion-Revision invalid.[S. 143 (3)]

Held that that even if the loss was treated as speculation loss the declared loss as well as taxable income would remain the same for the assessment years 2015-16 and 2016-17. There was no loss to the Revenue. The reason was that the assessee had huge losses brought forward from earlier years and if the amount was not allowed to be set off it would be adjusted against the brought forward losses. If there was no loss of revenue in the year or in the subsequent year nor would it impact the taxable income, the assessment order could not be held to be prejudicial to the interests of the Revenue and accordingly, the assessment order could not be set aside..(AY.2015-16, 2016-17)

Vijay Kumar Aggarwal v. PCIT (2022) 93 ITR 602 (Delhi) (Trib)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Transfer pricing adjustment-Failure by Assessing Officer to make assessment in conformity with order of Transfer Pricing Officer-Revision is valid [S. 92CA]

Held that The Principal Commissioner in accordance with the provisions of the Act had given an opportunity of being heard to the assessee, determined the amount of the adjustment made by the Transfer Pricing Officer that was not brought to tax and set aside the order of the

Assessing Officer directing him to rectify the order to the extent of the adjustment made by the Transfer Pricing Officer. Revision order is held to be valid.*(*AY.2012-13)

Actia (India) Pvt. Ltd. v. PCIT (2022)93 ITR 65 (SN)(Delhi) (Trib)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Capital gains-Capital asset-Relinquishment of right in asset-Compensation-Right to sue-Compensation correctly assessed as capital gains-Revision to assess the compensation as income from other sources is held to be not valid [S. 2(14), 45, 56]

Allowing the appeal the Tribunal held that he Principal Commissioner had attempted to substitute his wisdom by views of the Assessing Officer without any definite basis. The view taken by the Assessing Officer was clearly plausible in law and could not have been displaced in a revisionary proceedings by a very untenable or a debatable view. Moreover, having come to the conclusion that the income should be taxed under the head Income from other sources it was not open to the Principal Commissioner to direct the Assessing Officer to make enquiries and verifications without keeping the issue open for him to be determined afresh. The Principal Commissioner had also failed to spell out what further enquiry or verifications were required to be made independently where all the evidence was already perused. The Principal Commissioner had failed to demonstrate any perceived error in the assessment order. The revisional order was to be set aside on the point of taxability of capital gains on sale of land parcel in question.(AY.2015-16)

Anil Rambhai Mevad v. PCIT (2022)93 ITR 8 (SN)/ / 215 TTJ 428/ 209 DTR 298 (Ahd) (Trib)

Deepakkumar Rambhai Mevada v. PCIT (2022)93 ITR 8/)/ 215 TTJ 428/ 209 DTR 298 (SN)(Ahd) (Trib)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Share premium-Report of expert-PCIT is not entitled to reject valuation report in absence of report from another expert [S. 56(2)(vii)]

Allowing the appeal, that the Assessing Officer had called for the details of receipt of share premium as well as the report of valuation of shares from the chartered accountant and the assessee had responded to the query submitting all the requisite information called for by the Assessing Officer. The order sheet entry and the notices issued under section 143(2) revealed that the Assessing Officer had enquired into the issue sought to be revised by the Principal Commissioner. The very fact that the Assessing Officer had called for report of valuation of shares given by the chartered accountant showed that the Assessing Officer had enquired and had gone into issue of applicability of the provisions of section 56(2)(viib) of the Act. Therefore, it could not be said that there was total lack of enquiry on the part of the Assessing Officer. The Principal Commissioner could not come to the conclusion that the report of valuation of shares was unacceptable in the absence of a report from another expert. The material on record did not suggest any error in the methodology adopted in the report. There was no material on record to show that there was an error in the assessment order passed by the Assessing Officer. In these circumstances, the Principal Commissioner was not justified in exercising the power of revision in respect of issue of receipt of share premium.(AY.2013-14)

Ashdan Developers Pvt. Ltd. v. PCIT (2022)93 ITR 6 (SN)(Pune) (Trib)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Failure to examine expenditure incurred with reference to dividend income-Revision is held to be valid [S. 14A, 8D(2)(iii)]

Held, that the Assessing Officer had failed to examine the entire expenditure incurred by the assessee including the expenditure relating to dividend income. The assessment order passed by the Assessing Officer was erroneous and prejudicial to the interests of the Revenue and the Assessing Officer was directed to redo the assessment in accordance with law without being influenced by the observations made by the Principal Commissioner.(AY.2015-16, 2016-17)

Chettinad Lignite Transport Services Pvt. Ltd. v. PCIT (2022)93 ITR 74 (SN)(Chennnai) (Trib)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Purchases from Special Economic Zone unit claimed as deemed import-Value added tax input on deemed import as expense in Profit and Loss Account-Order passed by Assessing Officer erroneous-Revision valid. [S. 143(3)]

Held that the invoices of the deemed import filed by the assessee demonstrated that the assessee had paid value added tax on such purchases. The assessee had incurred value added tax expenses on the deemed import which were eligible to be set off against the value added tax output. Thus the finding of the Principal Commissioner that there was no value added tax input available to the assessee on the deemed import was incorrect. However the question whether the assessee had claimed value added tax input on the deemed import as an expense in the profit and loss account had not been verified by the Assessing Officer. The assessee had not brought anything on record suggesting that it had not claimed value added tax input on the deemed import as an expense in the profit and loss account. For this limited purpose, the order passed by the Assessing Officer was erroneous in so far prejudicial to the interests of the Revenue. There was no reason to interfere in the finding of the Principal Commissioner.(AY.2014-15)

Starline Organics Pvt. Ltd. v.PCIT (2022)93 ITR 22 (SN)(Ahd) (Trib)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Business expenditure-Corporate social responsibility expenses-Amendment brought by way of Explanation 2 to section 37(1) by Finance Act, 2014, with effect from 1-4-2015 is not retrospective in nature-Revision is held to be not valid [S. 37(1)]

The Assessee expenditure incurred towards same as corporate social responsibility (CSR) expense. Assessing Officer allowed the said expenditure. Principal Commissioner invoked revision jurisdiction on ground that CSR expenses claimed by assessee was not incurred

wholly and exclusively for its business purposes as per provisions under section 37(1) of the Act. On appeal the Tribunal held that amendment brought by way of Explanation 2 to section 37(1) by Finance Act, 2014, with effect from 1-4-2015 providing for disallowance of CSR expenditure was not retrospective in nature. Therefore expenditure incurred by assessee towards CSR was allowable as deduction for both relevant assessment years 2013-14 and 2014-15. Revision is held to be not valid. (AY. 2013-14, 2014-15)

Garden Reach Ship Builders & Engineers Ltd. v. PCIT (2022) 193 ITD 649 (Kol) (Trib.)

S. 263: Commissioner-Revision of orders prejudicial to revenue-CSR funds received-Specific projects-Not income of the trust-sustainable view taken by the Ld. AO-Order of revision set aside. [S. 2(24), 11]

Where the Ld. Assessing Officer (AO), *inter alia,* had relied on the decision of the Hon'ble Delhi High Court in the case of DIT v. Society for Development Alternative 18 taxmann.com 364 (Delhi)(HC) and held that the CSR funds received were specific tied up grants for development of a project of a capital nature, and hence cannot be considered for application of 85 percent of income during the year under consideration. The view taken by the Ld. AO was a sustainable view, therefore the Ld. CIT(E) is not justified in holding that the order of the Ld. AO as erroneous. (ITA 697-698/MUM/2021 dated January 01, 2022.) (AY. 2015-16 & 2016-17)

JM Financial Foundation v. CIT (Mum) (Trib)www.itatonline.org

S. 263: Commissioner-Revision of orders prejudicial to revenue-AO examined the issue-PCIT cannot demonstrate the error or lack of enquiry-Cannot be deemed to be erroneous-S. 56 (2)(viia) not applicable to gifting of shares of a listed company. [S. 56(2)(viia)]

Where the assessee is a partnership firm wherein a Trust held 97 per cent partnership share and 1 per cent share each is held by three different LLPs in assessee firm. Trustee of the Trust is a private limited company. In the trustee company, Dr. Habil Khorakiwala and Nafisa Khorakiwala were the directors. In view of group restructuring shares of a listed company were gifted to the partnership Firm. The AO accepted the gift of shares and dividend thereof. The PCIT revised the order under section 263 of the Act on account of lack of enquiry by the AO. It was held that the AO had carried out necessary enquiries, the PCIT could not show that what further enquiry should have been made. Order cannot be deemed erroneous as well as prejudicial to the interest of the revenue with respect to Explanation 2 to section 263 of the Act. Further held that the Gift of shares of a listed company are not chargeable to tax in the hands of the assessee firm under section 56 (2) (viia) of the Act as assessee has received gift of shares of a company in which public are substantially interested which could not have been taxed under the said provision. (ITA. 726/Mum/2021 dt. 1-1-2022) (AY.)

Humuza Consultants v. PCIT 2022 (Mum(Trib) www.itatonline.org

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Order passed by the Assessing Officer of a different jurisdiction-Assessment order was passed on basis of an invalid and non est notice, it could not be countenanced in law, and consequently, revisional action is not permissible hence not valid.[S. 127, 143(2), 143(3), 292BB]

Assessment order was passed by Assessing Officer, Raipur whereby return of income filed by assessee showing loss was assessed without any adjustment. Revision order was passed on ground that Assessing Officer had failed to carry out necessary verification and he was directed to conduct necessary inquiries. On appeal, assessee challenged said order on ground that assessment order was illegal as Assessing Officer who passed assessment order at Raipur did not issue notice under section 143(2) prior to assessment. It was found that assessment was made by Assessing Officer, Raipur on foundation of section 143(2) notice issued by Assessing Oficer, Kolkata and said proceedings under section 143(2) were dropped by Assessing Officer, Kolkata and thereafter an order under section 127(2)(a) was passed whereby jurisdiction over assessee was transferred from AO, Kolkata to Assessing Officer, Raipur. Tribunal held that since assessment order was passed on basis of an invalid and non est notice, it could not be countenanced in law, and consequently, revisional action under section 263 was not permissible. (AY. 2017-18)

Minimax Commerce (P.) Ltd. v. ACIT (2022) 192 ITD 303 / 219 TTJ 24 (UO) (Raipur) (Trib.)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Pendency of appeal before CIT(A)-Commissioner can assume jurisdiction under section 263 in respect of issues which have not been considered and decided by Commissioner (Appeals)-Cash credits-Accommodation entries-Revision is held to be valid.[S. 68, 148]

Assessing Officer without carrying out any sort of investigation or verification or recording his satisfaction, treated sales as bogus and charged 25 per cent as income derived out of accommodation entries. Order of Assessing Officer being erroneous as well as prejudicial to interest of revenue, Commissioner was justified in exercising his revisionary jurisdiction and pointing out discrepancies in order passed by Assessing Officer.Commissioner can assume jurisdiction under section 263 in respect of issues which have not been considered and decided by Commissioner (Appeals) (AY. 2011-12)

JR Industries. v. PCIT (2022) 192 ITD 414 / 99 ITR 422/ 217 TTJ 412 / 217 DTR 230(Jaipur) (Trib.)

OM Industries v.PCIT (2022) 192 ITD 414/ 99 ITR 422/ 217 TTJ 412 / 217 DTR 230 (Jaipur) (Trib.)

Vikas Oil Products v. PCIT 192 ITD 414/ 99 ITR 422/ 217 TTJ 412 / 217 DTR 230 (Jaipur) (Trib.)

S. 264 :Commissioner-Revision of other orders-Withdrawal of application-Rejection of prayer for withdrawal of application-decided the application on merit-Directed the Commissioner to decide the application for withdrawal as expeditiously as possible [Art. 226]

Assessee made an application to withdraw revision petition filed. Commissioner rejected the prayer of withdrawal by following judgment of Bombay High Court in case of Simplex Enterprises v. UOI (2003) 132 Taman 934/ 257 ITR 934 (Bom)(HC). On writ the court held that the said judgment was based on a set of facts which were distinct as compared to factual

matrix of the assessee.By not allowing prayer for withdrawal and proceeding to decide revision on merits, revisional authority wrongly exercised jurisdiction vested in it and, consequently, matter was to be remanded to revisional authority to reconsider application for withdrawal as expeditiously as possible.

Rajendra Singh v. UOI (2022) 217 DTR 433 / 328 CTR 915 / 144 taxmann. com 167 /(2023) 291 Taxman 168 (MP)(HC)
Kaiteshwari Devi (Smt) v. UOI 217 DTR 433 / 328 CTR 915 (MP)(HC)

S. 264 :Commissioner-Revision of other orders –Temporary advance in respect of nine concerns-Interest on borrowed capital-Reassessment-Rejection of revision application is held to be not valid [S. 36(1)(iii) 147, 148, Art, 226]

Assessment was reopened on ground that the assessee had provided temporary advance of Rs. 7.96 crores in respect of nine concerns for non-business purpose and raised huge secured loan and claimed interest expenses on such secured loan which were utilized for providing temporary advance to sister concerns and accordingly, claim of interest expenses was not at all related to business. Assessee submitted that he had sufficient funds other than borrowed funds to make such advances and there was no nexus between borrowed funds and such advances and, consequently no part of interest paid by assessee to banks/financial institutions was disallowable. The Assessing Officer passed the reassessment order disallowing the interest. The assessee filed revision application before the Principal Commissioner. Commissioner rejected the application. On writ allowing the petition order of commissioner and reassessment order was set aside (AY. 2008-09)

D.R Patanaik v. CCIT (2022) 288 Taxman 584 (Orissa)(HC

S. 264: Commissioner-Revision of other orders-Business loss or speculation-Amount voluntary agreed can also be the subject matter of revision-Rejection of revision application was not valid-Directed the Commissioner to decide on merit after considering all the submissions.[S. 43(5) (d), 139, Art, 226]

The assessee filed the return showing the derivative loss as speculation loss and has not setoff against other income. On realizing the mistake the assessee filed revision petition stating that due to mistake he has shown derivative loss as speculative loss instead of business loss. The revision petition was dismissed on account of delay. High Court set aside the order for denovo consideration. The Commissioner dismissed the petition on the ground that additions which are voluntarily agreed cannot be the subject matter of revision.On writ allowing the petition the Court held thateven if, return as submitted by the assessee is accepted by the Assessing Officer, and if thereafter, the assessee comes to know about the mistakes committed, that he was not liable for more taxation or had paid more tax, he can definitely approach revenue authority and in such event, it is open to the revisional authority to exercise its jurisdiction u/s 264 of the Act. Once assessee is able to satisfy about mistake

due to which there was over assessment, the Commissioner had power to correct the same u/s 264(1) of the Act. In such situation, we would expect the Commissioner to apply his mind to the question and decide the matter. Simply saying, additions which are voluntarily agreed, cannot be the subject matter of revision, would be little harsh on assessee. Therefore, we hereby set aside order dated 29.09.2014 impugned in this petition and remand the matter to the Commissioner of Income Tax for denovo consideration of petitioner's application u/s 264 of the Act. (WP No. 1777 of 2015, Dt. 29-4-22) (AY. 2008-2009)

Anup Lakhmichand Anand v. CIT (2022) 216 DTR 401/ 328 CTR 716 (Bom.) (HC)

S. 264: Commissioner-Revision of other orders-Petition cannot be dismissed on the ground that the assessee has not waived the right of appeal before the Commissioner of Income-tax (Appeals).[S. 246A, 264(4), Art, 226]

The petitioner filed revision petition before the Commissioner. The Commissioner dismissed the petition on the ground that the same was not maintainable as an appeal lies against the order against which the application has been made for revision and assessee has not waived their right of appeal before the Commissioner of Income-tax Appeals). On writ allowing the petition the Court directed the PCIT to consider the application on merit. Relied onAafreen Fatima Fazal Abbas Sayed v. ACIT, (2021) 127 taxmann.com 819 / 280 Taxman 429 / 434 ITR 504 (Bom))(HC) (WP No. 751 of 2021, dt.1-2-2022)
Girish Raghvan v. PCIT (Bom.)(HC)(UR)

S. 264 :Commissioner-Revision of other orders-Private company-Liability of directors-Non speaking order without any reasons-AO wishes to rely on any judgements or order passed by any Court or Tribunal he should provide a copy thereof to the petitioner and allow an opportunity to deal with those judgements or distinguish those judgements and the submission of the assessee shall also be dealt with in the order-Order of Assessing officer is set aside.[S. 179, Art, 226]

The AO initiated the proceedings u/s 179 of the Act. The petitioner has filed a detailed reply. The AO rejected the application on the ground that same is not accepted. The petitioner filed an application under section 264 of the Act against an order passed u/s 179 of the Act. The Commissioner rejected the application without dealing with the submission of the assesee. On writ the Court set aside the order and directed the AO to give personal hearing in advance. The Court also observed that if the AO wishes to rely on any judgements or order passed by any Court or Tribunal he should provide a copy thereof to the petitioner and allow an opportunity to deal with those judgements or distinguish those judgements and the submission of the assessee shall also be dealt with in the order.(WP.No. 560 of 2021 dt 31-1 2022)(AY. 2015-16)

Bhavesh Mohan Lakhwani v.PCIT (2022) BCAJ-March-P. 49 (Bom)(HC)

S. 264 :Commissioner-Revision of other orders –Powers-Capital gains-Full value of consideration-Escrow account-Consideration received less than the amount credited in the account-Only actual consideration taxable-Power of Principal Commissioner not restricted to allowing relief only up to returned income-Recomputation results in income less than returned income-Section 240 not applicable-Entitle to refund of excess tax paid [S.45, 48, 240, 264, Art, 226]

The assessee computed the capital gains on sale of shares taking into account the proportion of the total consideration which included the escrow amount which had not been received by the time returns were filed but were received by the promoters but were still parked in the escrow account. The income declared by the assessee was accepted in the scrutiny assessment. The assessee stated that subsequent to the sale of the shares certain statutory and other liabilities arose for the period prior to the sale of the shares and according to the agreement, certain amount was withdrawn from the escrow account and it did not receive the amount. The assessee filed an application under section 264 before the Principal Commissioner and submitted that the capital gains were to be recomputed accordingly reducing the proportionate amount from the amount deducted from the escrow account and that an application under section 264 was filed since the assessment had been completed by the time the amount was deducted from the escrow account. The Principal Commissioner rejected the assessee's application. On writ allowing the petition the Court held that that capital gains was computed under section 48 of the Act by reducing from the full value of consideration received or accrued as a result of transfer of capital asset, cost of acquisition, cost of improvement and cost of transfer. The real income (capital gains) could be computed only by taking into account the real sale consideration, i. e., sale consideration after reducing the amount withdrawn from the escrow account. The amount was neither received nor accrued since it was transferred directly to the escrow account and was withdrawn from the escrow account. When the amount had not been received or accrued it could not be taken as full value of consideration in computing the capital gains from the transfer of the shares of the assessee. The purchase price as defined in the agreement was not an absolute amount as it was subject to certain liabilities which might have arisen on account of certain subsequent events. The full value of consideration for computing capital gains would be the amount which was ultimately received after the adjustments on account of the liabilities from the escrow account as mentioned in the agreement. The liability as contemplated in the agreement should be taken into account to determine the full value of consideration. Therefore, if the sale consideration specified in the agreement was along with certain liability, then the full value of consideration for the purpose of computing capital gains under section 48 of the Act was the consideration specified in the agreement as reduced by the liability. The full value of consideration under section 48 would be the amount arrived at after reducing the liabilities from the purchase price mentioned in the agreement. Even if the contingent liability was to be regarded as a subsequent event, it ought to be taken into consideration in determining the capital gains chargeable under section 45. Such reduced amount should be taken as the full value of consideration for computing the capital gains under section 48. If income did not result at all, there could not be a tax, even though in book keeping, an entry was made about hypothetical income which did not materialize. Therefore, the Principal Commissioner ought to have directed the Assessing Officer to recompute the assessee's income irrespective of whether the computation would result in income being less than the returned income. CIT v. Shoorji Vallabhdas and co.(1962) 46 ITR 144 (SC), relied. Court also held that reliance by the Principal Commissioner on the provisions of section 240

to hold that he had no power to reduce the returned income was erroneous because the circumstances provided in the proviso to section 240 did not exist. The proviso to section 240 only provides that in case of annulment of assessment, refund of tax paid by the assessee according to the return of income could not be granted to the assessee. The only thing that was sacrosanct was that an assessee was liable to pay only such amount which was legally due under the Act and nothing more. Therefore, the assessee was entitled to refund of excess tax paid on the excess capital gains.

Section 264 of the Income-tax Act, 1961 does not restrict the scope of powers of the Principal Commissioner to restrict relief to an assessee only to the returned income. Where the income can be said not to have resulted at all, there is neither accrual nor receipt of income even though an entry might, in certain circumstances, have been made in the books of account.

It is the obligation of the Department to tax an assessee on the income chargeable to tax under the Act but if higher income is offered to tax, it is the duty of the Department to compute the correct income and grant the refund of taxes erroneously paid by the assessee. There is no provision in the Act which provides, if the assessed income is less than the returned income, the refund of the excess tax paid by the assessee would not be granted to the assessee. If the returned income shows a higher tax liability than what is actually chargeable under the Act, then the assessee is entitled to refund of excess tax paid by it.(AY.2011-12)

Dinesh Vazirani v. PCIT (2022)445 ITR 110 (Bom)(HC)

S. 264 :Commissioner-Revision of other orders-Limitation-Pursuing appeal mistakenly-Delay in filing revision petition-Period spent in prosecuting appeal excluded-Matter remanded to Commissioner.[S. 246A, 248, Limitation Act, 1963, S. 14, Art, 226]

Commissioner (IT) rejected the revision petition filed by the assessee under section 264 of the Income-tax Act, 1961 on the ground of delay in filing the petition. The assessee filed a writ petition submitting that under a bona fide mistake of law and relying on the earlier orders passed by the Income-tax Officer and the Commissioner (Appeals) in its favour on the similar issue, it had filed and pursued an appeal under section 248 under the belief that the order was appealable and hence the delay. Allowing the petition the Court held that if the time spent by the assessee in prosecuting the appeal under section 248 was excluded, the revision petition filed under section 264 would be within the limitation period. On the facts section 14 of the Limitation Act, 1963, was attracted and the assessee was entitled to exclusion of time spent in prosecuting the proceeding bona fide in a court without jurisdiction. The matter was remanded to the Commissioner (IT) to decide on the merits.(AY. 2018-19)

KLJ Organic Ltd. v. CIT (IT) (2022) 444 ITR 62 / 286 Taxman 282 (Delhi)(HC)

S.264 :Commissioner-Revision of other orders-Order of dismissal by Single judge is held to be not proper-Order of Principal Commissioner set aside-Matter remanded to Principal Commissioner. [S. 143(3),246A, Art, 226]

On appeal against the order of single judge, allowing the appeal the Court held that the Principal Commissioner had committed an error in rejecting the revision petition filed by the assessee under section 264 on the ground that the assessee's writ petition challenging the assessment order had been dismissed. The single judge had dismissed the writ petition on the

ground that there was no breach of principles of natural justice but not on the merits of the assessment. Therefore, the Principal Commissioner had committed an error in making such observation. The court had also faulted the assessee for having not filed a statutory appeal against the order of the assessment before the Commissioner (Appeals) under section 246A. The appeal might have been time barred but nevertheless the assessee could not be foreclosed from availing of the revisional remedy under section 264 which was an independent remedy provided to an aggrieved assessee under the provisions of the Act. Therefore, the decision was required to be taken by the Principal Commissioner on the merits of the matter in accordance with law. Since the revision petition had been manually presented, the assessee had also to be afforded an opportunity of personal hearing. The order passed by the Principal Commissioner under section 264 was set aside and the revision petition was restored to the Principal Commissioner. Consequently, the order passed in the writ petition was also set aside. The court also set aside the rectification of revision order and consequential penalty order. (AY. 2018-19)

Unisource Hydro Carbon Services Pvt. Ltd. v. UOI(2022) 444 ITR 229 (Cal)
Editorial : Order of single judge Unisource Hydro Carbon Services Pvt. Ltd. v. UOI(2022) 444 ITR 227/ 139 taxmann.com 411/ 212 DTR 151 (Cal) reversed.

S. 264 :Commissioner-Revision of other orders-Commissioner can give relief to an assessee who has committed mistake-DTAA-India-Kuwait [S. 143(3), Art. 10, Art. 226]

In the original return and revised return the petitioner has not claimed the benefit of article 10 of the India-Kuwait Double taxation Avoidance Agreement. The petitioner filed application under section 264 of the Act. The application was rejected on the ground that the assessment was completed under section 143(3) and there was no apparent error on the record in the assessment order. On writ allowing the petition the Court held thatsection 264 of the Income-tax Act, 1961, does not limit the power of the Commissioner to correct errors committed by the sub-ordinate authorities and can even be exercised where errors are committed by the assessee. There is nothing in section 264 which places any restriction on the Commissioner's revisional power to give relief to the assessee in a case where the assessee detects mistakes after the assessment is completed.

Court held that the very foundation of the application under section 264 was that the assessee had inadvertently failed to claim the benefit of article 10 of the Double Taxation Avoidance Agreement between India and Kuwait, under which the dividend distribution was taxed at a lower rate. The Commissioner had the power to consider the claim under section 264. The rejection of the application for revision was not valid. Geekay Security Services (P) Ltd v. Dy.CIT (2019) 101 taxmann.com 192 (Bom)(HC) followed.(AY. 2016-17)

Hapag Lloyd India Pvt. Ltd. v.PCIT (2022)443 ITR 168 / 212 DTR 99/ (2023) 330 CTR 699 (Bom)(HC)

S. 264 :Commissioner-Revision of other orders-Binding precedent-Subordinate Authority to follow the ruing of Higher Authority-Rejection of revision petition on ground that appeal pending in High Court on similar issue against order of Tribunal-Held to be not proper-Matter remanded for de novo consideration [S. 260, Art, 226]

The Commissioner rejected the petition on the grounds that though the Tribunal had deleted the addition made by the Assessing Officer on account of interest earned from fixed deposit by the assessee for the assessment years 2012-13 to 2015-16 the Department had not accepted the decision of the Tribunal and had filed an appeal before the High Court and that various courts had held that interest earned under similar circumstances and facts to be of revenue in nature and liable to tax. On a writ petition the Court held, that unless there was a stay by a competent court of the operation of the order of the Tribunal, the Principal Commissioner should give effect to the order and pass an order in accordance with law. The order of the Tribunal or the operation of the order had not been suspended by any court. The Principal Commissioner should grant a personal hearing to the assessee and provide an opportunity to rely on or distinguish any judgments or order passed by any court or Tribunal and consider the assessee's submissions in the assessment order. The order rejecting the assessee's petition under section 264 read with section 260 was set aside and the matter was remanded for de novo consideration.Matter remanded. referred UOI v. Kamlakshi Finance Corporation Ltd. [1992] Supp (1) SCC 443 (AY.2012-13 to 2015-16)

Karanja Terminal and Logistic Pvt. Ltd. v. PCIT (2022)442 ITR 400/ 211 DTR 161/ 325 CTR 392/ 287 Taxman 410 (Bom) (HC)

S. 264 :Commissioner-Revision of other orders-Interest receipt was shown as capital receipt-Commissioner refusing to follow the order of Tribunal and dismissing the revision application-Order of Tribunal is binding on the Commissioner-Order of Commissioner was quashed-If any judgements to be relied the Commissioner should give an opportunity to the petitioner to deal with those judgements-Matter remanded. [S. 4 Art.226]

The petitioner has earned interest on fixed deposits which was shown as revenue receipts. Subsequent years the petitioner had changed the stand and treated the interests on fixed deposit as capital receipt. On appeal the Tribunal has accepted the stand of the petitioner. The revenue has filed an appeal before the High Court. The petitioner moved revision application for earlier years and contended that based on the order of Tribunal interest on fixed deposits are not taxable. The revision application was rejected by the Commissioner.On writ allowing the petition the Court held that the order of Tribunal is binding on the Commissioner and directed the Commissioner to pass an order by giving a reasonable opportunity of hearing, Court also observed that if commissioner desires to rely on any judgements he should give an opportunity to the petitioner to deal with those judgements. Relied on UOI v. Kamlakshi Finance Corporation Ltd 1992 Supp.(1) SCC 443. (AY. 2011-12, 2012-13)

Karanja Terminal & Logistic Pvt Ltd v. PCIT(2022) 442 ITR 400/ 211 DTR 161/ 325 CTR 392/ 287 Taxman 410 (Bom) (HC)

S. 264 : Commissioner-Revision of other orders –Rejection of revision application merely on the ground that failure to submit reply is quashed and set aside-Matter remanded.[Art, 226]

Assessing Officer without considering assessee's reply completed assessment proceedings under section 144 of the Act. Assessee preferred a revision application which was rejected only on ground that assessee failed to submit any reply in revision filed by him. On writ the Court set aside the order being a non-speaking order and the matter was remanded for reconsideration. (AY. 2017-18)
Ram Nagar Degree College Barabanki v. PCIT (2022) 448 ITR 161/ 284 Taxman 118 (All.)(HC)

S. 268A : Appeal –Instructions-Monetary limit less than Rs 2 Crores-Appeal of Revenue was dismissed.

The tax effect in an appeal filed by revenue was less than Rs. 2 crores, which was below the monetary limit as per Circular 17/2019, dated 8-8-2019, appeal was dismissed due to low tax effect
CIT v. Maharashtra Seamless Ltd. (2022) 220 DTR 415/329 CTR 937 (SC)
CIT v. Air France (2022) 220 DTR 416/ 330 CTR 110 (SC)
CIT v. British Airways (2022) 220 DTR 416 / 330 CTR 110 (SC)

S. 268A : Appeal-Application-Reference-Instructions-CBDT Circular-Low tax effect-Tribunal dismissed the appeal on disallowance u/s. 14A. Since the Tribunal recorded findings only on the interpretation of the contents of the Circular No. 5/2014 dealing with disallowance u/s. 14A, the said findings cannot be regarded as the Tribunal declaring the CBDT Circular No. 5/2014 either as illegal or ultra vires.[S. 253, 260A]
The Revenue filed an appeal to the High Court against the order passed by the Tribunal on the issue of deletion of disallowance u/s. 14A on the ground that the same was against the CBDT's Circular No. 5/2014. The Revenue argued that the case would fall within the exceptions provided in clause 10(b) of the Circular No. 17/2019 on low tax effect. The High Court held that the instant case did not fall within the said exception since the Tribunal has nowhere declared the Circular No. 5/2014 as illegal or ultra vires and hence dismissed the appeal since the tax effect was much less than the prescribed limit. (AY. 2015-16)
PCIT v. Hyrcon Electronics (2022) 209 DTR 61 / 324 CTR 614 (HP) (HC)

S. 268A : Appeal-Application –Reference-Instructions-Monetary Limits-Exceptions-Circular No. 23 of 2019 providing that monetary limits would not apply where CBDT by special order directed filing of appeals-The legislative intent is clear that circular dated September 6, 2019 would not apply with retrospective effect-Though the Revenue had alleged organized tax evasion activity on the part of the assessee in those pending appeals as on the date of Circular No. 23 of 2019, the Revenue could not be allowed to pursue these appeals. Since the tax effect involved in this batch of appeals was less than the monetary limit prescribed in the earlier circulars of the Central Board of Direct Taxes-, The Revenue was not allowed to proceed the appeals on the merits-Appeals of the revenue was dismissed.[S. 119, 260A]

Dismissing the appeals of the Revenue the Court held that a perusal of section 268A of the Income-tax Act, 1961 clearly provides that the Central Board of Direct Taxes is empowered to issue orders, instructions or directions to the Income-tax authorities fixing such monetary limits as it may deem fit for the purpose of filing of appeals or applications for reference by any Income-tax authority under the provisions of Chapter XX.

By Circular No. 3 of 2018 ([2018] 405 ITR (St.) 29), in supersession of Circular No. 21 of 2015, dated December 10, 2015 ([2015] 379 ITR (St.) 107), the Board decided that Departmental appeals may be filed on the merits before the Appellate Tribunal and High Courts and special leave petitions and appeals before the Supreme Court keeping in view the monetary limits and conditions specified therein. For appeals before the High Courts, the monetary limit is prescribed as Rs. 50 lakhs. By Circular No. 17 of 2019, dated August 8, 2019 ([2019] 416 ITR (St.) 106), the Board enhanced the monetary limit from Rs. 50 lakhs to Rs. one crore. In Circular No. 23 of 2019, dated September 6, 2019 ([2019] 417 ITR (St.) 4), the Board noticed that several references had been received by the Board in a large number of cases where organised tax evasion came through bogus long-term capital gains and short-term capital loss on penny stocks and the Department was unable to pursue these cases before higher judicial fora on account of enhanced monetary limits. The Board further noticed that in a large number of cases the Tribunal and the High Court had recognized the unique modus operandi involved in such scam and had passed judgments in favour of the Revenue. However, in cases where appellate fora had not given due consideration to position of law or facts investigated by the Department, there was no remedy available with the Department for filing further appeals in view of the prescribed monetary limits. The Board accordingly clarified that notwithstanding anything contained in any circular issued under section 268A specifying monetary limits for filing of Departmental appeals before the Tribunal and High Courts and special leave petitions and appeals before the Supreme Court, appeals may be filed on the merits as an exception to the circular where the Board, by way of special order directed the filing of appeals on the merits in cases involved in organised tax evasion activity. Circular No. 23 of 2019 was clarified by Office Memorandum dated September 16, 2019 ([2019] 417 ITR (St.) 53) that by virtue of powers of the Board under section 268A of the Act, the monetary limits fixed for filing appeals before the Tribunal, the High Court and special leave petitions, and appeals before the Supreme Court shall not apply in cases of assessees claiming bogus long-term capital gains and short-term capital loss through penny stocks and appeals and special leave petitions in such cases shall be filed on the merits. It is, thus, clear beyond reasonable doubt that the exception is carved out by Circular No. 23 of 2019 to file appeals on the merits in cases involved in organized tax evasion activity notwithstanding anything contained in any circular issued under section 268A of the Act, specifying monetary limits for filing of Departmental appeals. However, on a plain reading of Circular No. 23 of 2019 read with Office Memorandum dated September 16, 2019, it is clear that appeals are directed to be filed on the merits as exception to the earlier circulars issued under section 268A of the Act in cases involving organized tax evasion activity from the date of Circular No.23 of 2019, dated September 6, 2019 and not to appeals already filed and were pending involving organized tax evasion activity on the part of an assessee prior to the date of circular dated September 16, 2019. Circular No.23 of 2019 read with Office Memorandum dated September 16, 2019 would not apply to pending appeals though involving an organized tax evasion activity on the date of the circular. Circular No. 23 of 2019 does not provide that it would apply even to pending cases lodged on the date of the circular. Appeals pending on the date of Circular No. 23 of 2019 thus would

not be covered by Circular No. 23 of 2019 even with the special order of the Board. Circular No. 23 of 2019, dated September 6, 2019 read with Office Memorandum dated September 16, 2019 do not empower the Board to pass any special order directing the Income-tax Department to file an appeal on the merits in pending cases even if alleging organized tax evasion activity on the part of the assessee. Paragraph 13 of Circular No. 3 of 2018, dated July 11, 2018 specifically prescribes that the circular would apply to special leave petitions, appeals, cross objections and references to be filed from the date of the circular in the Supreme Court, High Courts and Tribunals and it shall also apply retrospectively to pending special leave petitions, appeals, cross objections and references. The Income-tax Department was directed to withdraw or not press pending appeals below the specified tax limits set out in para 3 of the circular. However, no such specific direction was given in Circular No. 23 of 2019, dated September 6, 2019, thereby to apply the conditions set out therein to pending special leave petitions, appeals, cross objections and references before the Supreme Court, High Courts and Tribunal involving organized tax evasion activity. Circular No. 3 of 2018, dated July 11, 2018 cannot be read with Circular No. 23 of 2019, dated September 6, 2019 read with Office Memorandum dated September 16, 2019. The legislative intent is clear that circular dated September 6, 2019 would not apply with retrospective effect. Accordingly, dismissing the appeals, the Court held that in view of the fact that Circular No. 23 of 2019, dated September 6, 2019 read with Office Memorandum dated September 16, 2019 is not applicable with retrospective effect, though the Revenue had alleged organized tax evasion activity on the part of the assessee in those pending appeals as on the date of Circular No. 23 of 2019, the Revenue could not be allowed to pursue these appeals. Since the tax effect involved in this batch of appeals was less than the monetary limit prescribed in the earlier circulars of the Central Board of Direct Taxes, the Revenue was not allowed to proceed with these appeals on the merits.(AY.2005-06)

CIT v. Surendra Shantilal Peety (2022) 445 ITR 590 (Bom)(HC)

S. 268A : Appeal-Application-Reference-Instructions-CBDT Circular No. 23/2019, dated 6-9-2019 and Office Memorandum No. 279, dated 16-9-2019 both providing that cases involving organized tax evasion scam through bogus long-term capital gain/short-term capital loss on penny stocks are not subject to monetary limits prescribed for filing appeals, would apply prospectively to appeals filed on or after 16-9-2019.[S. 260A]

Held that CBDT Circular No 23/2019 dated 6-9-2019 and Office Memorandum No. 279, dated 16-9-2019 issued by CBDT both providing that cases involving organized tax evasion scam through bogus long-term capital gain/short-term capital loss on penny stocks are not subject to monetary limits prescribed for filing appeals, would apply prospectively to appeals filed on or after 16-9-2019.
PCIT v. Denisha Rajendra Keshwani. (2022) 285 Taxman 107 (Guj) (HC)

S. 268A : Appeal – Instructions – Appellate Tribunal – Concealment penalty – Bogus purchases – Monetary limits – Penalty does not fall in exceptional cause of circular – Appeal of Revenue was dismissed due to low tax effect . [S. 253 , 271(1)(c)]

Held, that quantum proceedings and penalty proceedings were independent and distinct proceedings and confirmation of an addition cannot on a standalone basis justify imposition or upholding of a penalty under section 271(1)(c) of the Act. Unless a specific exception is provided in the circular with respect to penalty, it could not be construed that penalty was to be treated at par with the quantum additions. Para 10(e) of the Central Board of Direct Taxes Circular No. 3 of 2018 (as amended on August 20, 2018), applied only to additions which were based on information received from external sources. The levy of penalty by no means could be construed as an addition within the meaning of para 10(e) of the circular. The appeal of the Revenue was covered by the Central Board of Direct Taxes Circular No. 17 of 2019, dated August 8, 2019, and was not maintainable. Appeal of Revenue was dismissed . Circular No 3 of 2018 (2018) 405 ITR (St.) 29, as amended on 20-8 -2018 [2018 407 ITR (St.) 7 , Circular No 17 of 2019 Dated 8-8-2019 [2019 416 ITR (St.) 106.(AY. 2009-10)
ITO v. Maniar Electricals P. Ltd. (2022)100 ITR 569 (Mum)(Trib)

S. 268A : Appeal – Instructions -Monetary limits for appeals by Department — How Compute- Tax effect of disputed amount of relief granted by Commissioner (Appeals) to be reckoned and not entire amount of relief granted .[S. 254(2)]
Held that the computation of tax effect, for the purpose of deciding the maintainability of the appeal having regard to Board Circulars dated August 8, 2019 and July 11, 2018 is to be based on the dispute involved in the grounds of appeal. What is relevant is the tax effect of the disputed amount of relief granted by the Commissioner (Appeals) ; and not the entire amount of relief granted by the Commissioner (Appeals).[The Bench clarified that the Department will be at liberty to approach the Tribunal under section 254(2) of the Act, seeking recall of the order and restoration of the appeal if the appeal of the Department was not covered by the Board Circulars dated August 8, 2019 and July 11, 2018. (Circular Nos 3 of 2018 dt. 11-7 2018 (2018) 405 ITR 29 (St), No. 17 of 2019 dt. 8-8-2019(2019)416 ITR 106 (St), Clarification No. F.No. 279/Misc . 142 / 2007 -ITJ , dated 20-8 -2018 (2018) 407 ITR 7 (St) (AY.2014-15)
ACIT v. Nippon Leakless Talbros Pvt. Ltd. (2022)100 ITR 55 (SN) (Delhi) (Trib)

S. 268A : Appeal –CBDT Circular –Tax effect from Rs 20 lakhs to Rs 50 lakhs-Enhancing limit-Applies appeals pending before ITAT
CBDT Circular No. 17/2019, dated 8-8-2019 revising/enhancing minimum threshold limit to tax effect from Rs. 20 lakhs to Rs. 50 lakhs were applicable retrospectively to all pending appeals. (AY. 2018-19, 2019-20)
ACIT v. Northern Motors (P.) Ltd. (2022) 195 ITD 207/ 216 TTJ 17(UO) (Amritsar) (Trib.)
ACIT v. Acme Forgings (2022) 195 ITD 207/ 216 TTJ 17(UO) (Amritsar) (Trib.)
ACIT v. Ashok Kumar Uppal (Dr.) (2022) 195 ITD 207/ 216 TTJ 17(UO) (Amritsar) (Trib.)

S. 268A : Appeal-Monetary limit-Penny stock-Shown as business income-Long term capital gains-Appeal of Revenue is as withdrawn on account of low tax effect.[S. 45]
Dismissing the appeal of the Revenue the Tribunal held that Circular No. 23 of 2019 dated 6-9-2019 read with Office Memorandum dated 16-9-2019, shall apply when assessee has earned/claimed bogus LTCG/STCL through penny stocks, however, where assessee has shown sale and purchase of such alleged penny stocks as 'income from business or profession' in its return of income, said Circular read with Memorandum would not be

applicable. Appeal of Revenue is treated as withdrawn on account of low tax effect. (AY. 2011-12)
ITO v. Palak Chinubhai Patel. (2022) 194 ITD 470 (Ahd) (Trib.)

S. 268A : Appeal-Monetary limit-Tax effect of quantum addition under dispute by revenue was less than prescribed monetary limit as fixed by relevant CBDT Circular, revenue's appeal was to be dismissed.

Tax effect of quantum addition under dispute by revenue was less than prescribed monetary limit of Rs. 50 lakhs, appeal would not be maintainable in terms of low tax effect circular issued by CBDT. (AY. 2013-14)
Bharath Wind Farm Ltd. v. DCIT (2022) 194 ITD 636 (Chennai) (Trib.)

S. 269UD : Purchase by Central Government of immoveable properties-Valuation of property should be just and reasonable-Rent capitalisation method-Adequate opportunity to be heard not given-Order of purchase of property-Not valid. [Form No. 37I, Art, 226]
Allowing the petition the Court held that the provisions of section 269UD are to be strictly construed, there is no power to extend time lines stipulated in the provision. Thus the transferors and the transferee did not have adequate opportunity to put forth their objections apart from failure to furnish the copy of the valuation report of the subject property as done by the Department. The documents pertaining to the three sale instances which were referred to in the show-cause notice were also not provided. There had been gross violation of principles of natural justice which would be sufficient to set aside the order passed by the appropriate authority. The transferors and the transferee contended that the appropriate method of valuation shall be the rent capitalisation method. The appropriate authority rejected such contention. The Appropriate Authority had two options firstly to examine and ascertain as to whether there was a valid tenancy or to hold that there is no tenancy subsisting. There could not be a conclusion, that the tenancy was not recognised and there is no such power vested with the Appropriate Authority by piercing into the transactions which were much ahead of the agreement for sale. The Appropriate Authority has no right to question the validity of the agreement for sale, nor can it go into the legality of the transaction or the title of the vendors. The specific plea of the transferors as regards the compelling circumstances to sell the property was not noted by the Appropriate Authority. The other factors which diminished the value of the property were not taken into consideration. The assessee was not provided with the copies of the relevant documents pertaining to the three properties which were referred to as the sale instances to arrive at the value of the subject property. There had been gross violation of principles of natural justice and a perversity in the approach of the authority and failure to take into consideration relevant materials, ignoring settled legal principles more particularly regarding the valuation of the property. The order passed under section 269UD was not valid.

Ashwika Kapur v. UIO (2022) 444 ITR 241 (Cal)(HC)

S. 269UD : Purchase by Central Government of immoveable properties –Notice must give details which led to inference of undervaluation-Order of Pre-Emptive purchase not valid-Transferee has a right to challenge order of purchase.[Art, 226]
Allowing the petition the Court held that issuance of a show-cause notice was not an empty formality. Its purpose was to give a reasonable opportunity to the affected persons to contend

that the apparent consideration under the agreement to sell the property was the market price or that there was no undervaluation because of peculiar facts. There was no finding that the undervaluation was intended to evade tax, let alone discharging the onus of establishing that undervaluation was with a view to evade tax. In the third order of the Appropriate Authority, it was only stated that the transaction under consideration was proposed to take place at a rate lower than the fair market value by more than 15 per cent. considering the fair market value determined by the Appropriate Authority. On this ground alone, the order was quashed and set aside. The view taken by the Appropriate Authority was palpably erroneous and could not stand the scrutiny of law even on the merits. The Valuation Officer had noted on April 22, 1991 and the Deputy Commissioner (Appropriate Authority) had noted on April 24, 1991 that the property was not under-valued. The Appropriate Authority had not stated in the reasons recorded in 1991 why it did not accept these two reports. The Appropriate Authority had not stated anywhere why he was not accepting the three comparable mentioned by the Valuation Officer and had not given the basis for comparing the properties SF and NA with the property in question, when those two properties were farther away than the three properties used by the Valuation Officer to compare. In any case, the valuation of the property NA used in the first order dated April 29, 1991 by the Appropriate Authority was only about 9 per cent. more compared to the property in question. The mathematical calculations by adding and subtracting advantages and disadvantages to arrive at a conclusion that there was undervaluation in excess of 15 per cent. limit could be stated to be far from being honest. This 15 per cent. limit also could not be applied mechanically but a reasonable margin of error had to be considered. Since the difference was only about 9 per cent. the Appropriate Authority for reasons which were obvious, in the supplementary show-cause notice read with the statement of valuation annexed thereto, had resorted to mathematical calculations and by adding and subtracting advantages and disadvantages had arrived at a conclusion that there was undervaluation in excess of 15 per cent. which was most improper on his part. He had not explained anywhere why the two properties of SF and NA were chosen as comparable and from where the details of those two properties were obtained. The Appropriate Authority ought to have disclosed everything in a transparent manner to enable the assessee to effectively respond. There was also no finding that the undervaluation was intended to evade tax which was mandatory vitiating the stand of the respondents. Even assuming that there was a difference of 15 per cent., the Appropriate Authority could not assume jurisdiction under section 269UD automatically. Various factors determined the price for a property such as demand, supply, terms of payment, the urgency for the seller to sell or for the buyer to buy, relationship between parties, dominance of a party etc. None of these were considered by the Appropriate Authority. Therefore, the third order of the Appropriate Authority under section 269UD was set aside. Court also held that Transferee has a right to challenge order of purchase.

Zeal Real Estate Ltd. v. UOI (2022) 444 ITR 442 (Bom)(HC)

S. 270A:Penalty for under-Reporting and misreporting of income-Immunity from imposition-Furnished all details of transactions-Disallowance cannot be considered misreporting-In absence of details as to which limb of section 270A was attracted and how ingredient of sub-section (9) of section 270A was satisfied, mere reference to word misreporting by revenue in penalty order to deny immunity from imposition of penalty and prosecution makes impugned order manifestly arbitrary-Penalty was quashed-Revenue was directed to grant immunity under section 270AA of the Act [S. 14A, 270A(9), 270AA Art, 226]

Assessee had made a disallowance of Rs. 3.20 crores which was recomputed by Assessing Officer at Rs. 6.82 crores.The Assessing Officer levied penalty under section 270A alleging misreporting of income. The assessee made petition for waiver of penalty under section 270AA of the Act, which was rejected.

The assessee filed writ challenging the said rejection. Allowing the petition the Court held that whether underreporting allegedly done by assessee could not amount to misreporting as assessee had furnished all details of transactions relating to disallowance made under section 14A and Assessing Officer as well as assessee had used same details to arrive at different conclusions i.e. differing quantum of disallowances under section 14A. This by no stretch of imagination could be held to be 'misreporting'. In absence of details as to which limb of section 270A was attracted and how ingredient of sub-section (9) of section 270A was satisfied, mere reference to word 'misreporting' by revenue in penalty order to deny immunity from imposition of penalty and prosecution makes impugned order manifestly arbitrary. Therefore penalty order was to be quashed and revenue was to be directed to grant immunity under section 270AA of the Act. (AY. 2018-19)

Prem Brothers Infrastructure LLP v. NFAC (2022) 288 Taxman 768 / 219 DTR 180 (Delhi)(HC)

S. 270A:Penalty for under-Reporting and misreporting of income-Pendency of appeal before Commissioner (Appeals)-Oder imposing the penalty was not valid-The concerned Assessing Officer may take further steps in accordance with law after the appeal is disposed by CIT (A) as far as it relates to penalty provisions under Section 270A of the Act-Faceless Assessment Officer was directed to pay a sum of Rs 10,000 from his personal account to 'PM Care Fund '.[S.144(C)(3), 246A, 275 Art, 226]

Assessment order was passed under Section 143(3) read with Section 144C(3) r.w.s 144B of the making certain additions to petitioner's income. Against the order the petitioner has filed appeal under Section 246A of the Act which was pending. The Assessing Officer levied the penalty u/s 270A of the Act.. On writ it was submitted that by virtue of provisions of Section 275 of the Act, any order imposing penalty under Section 270A of the Act could be passed only when there is no appeal is filed under Section 246A of the Act. Allowing the petition the court held that despite acknowledging that an appeal has been filed and provisions of Section 275 requiring the penalty proceeding have to be kept in abeyance, the Faceess Assessing Officer has passed the order, levying the penalty. The Court directed the Faceless Assessment Officer to pay a sum of Rs 10,000 from his personal account to 'PM Care Fund **'.** The court also held that the concerned officer may take further steps in accordance with law after the appeal is disposed by CIT (A) as far as it relates to penalty provisions under Section 270A of the Act. The court did not make any observations on the merits of the case. (WP No. 5555 of 2022 dt.6-5-2022)(AY. 2017-18)

Skoda Auto Volkswagen India Private Ltd. v. NFAC(2022) 214 DTR 281/ 327 CTR 347 (Bom)(HC)

S. 270A:Penalty for under-reporting and misreporting of income-Grant of immunity from penalty and prosecution-Voluntary computation of income filed to buy peace and avoid litigation-Failure to specify in penalty notice whether proceedings initiated for under-reporting or misreporting-Granted immunity. [S. 270AA(4) Art, 226]

The assessee's application for grant of immunity from penalty under section 270A was rejected on the ground that the assessee did not fall within the scope and ambit of section 270AA. On a writ petition contending that the order having been passed beyond the period of one month from the end of the month in which the assessee had filed the application seeking immunity was barred by limitation in terms of section 270AA(4) of the Act. Allowing the petition the Court held that the order of the Assessing Officer denying the benefit of immunity from penalty on the ground that the penalty was initiated under section 270A for misreporting of income was not only erroneous but also arbitrary and bereft of any reason since in the penalty notice he had failed to specify the limb-under-reporting or misreporting of income, under which the penalty proceedings had been initiated and how the ingredients of sub-section (9) of section 270A were satisfied. In the absence of such particulars, the mere reference to the word "misreporting" in the assessment order to deny immunity from imposition of penalty and prosecution made the order manifestly arbitrary. The entire edifice of the assessment order passed by the Assessing Officer was actually voluntary computation of income filed by the assessee to buy peace and avoid litigation, which fact had been duly noted and accepted in the assessment order and consequently, there was no question of any misreporting. The action of the Assessing Officer was contrary to the legislative intent of section 270AA. Therefore, the order passed under section 270AA(4) rejecting the assessee's application for immunity from penalty was set aside and the Assessing Officer was directed to grant immunity under section 270AA to the assessee. Court observed that the legislative intent of section 270AA of the Income-tax Act, 1961 is to encourage or incentivize a taxpayer to fast-track settlement of issues, recover tax demands, and reduce protracted litigation..(AY. 2018-19)

Schneider Electric South East Asia (HQ) Pte Ltd. v.ACIT (IT) (2022)443 ITR 186/ 213 DTR 134/ 326 CTR 374 (Delhi)(HC)

S.270AA: Immunity from imposition of penalty,etc-Order was set aside-Directed to grant immunity [S. 270A, 270AA(2),Art, 226]

The assessee had filed an application seeking immunity under section 270AA from imposition of penalty under section 270A the Act and AO passed order denying the immunity from penalty and prosecuting the assesse, the court held that where the assessee had satisfied the three basic conditions: (i) payment of the tax demand; (ii) non-institution of an appeal; and (iii) initiation of a penalty for underreporting of income and not on account of misreporting of income, the assessee cannot be denied immunity on account of AO's failure to issue an order under the Act within the statutory time limit. The Court set aside the 270A order and directed the Assessing Officer to grant immunity under section 270AA of the Act. Applied Schneider Electric South East Asia (HQ) PTE Ltd. v. ACIT, International Taxation [W.P. (c) No. 5111 of 2022, dated 28-3-2022](AY. 2017-18)

Ultimate Infratech P. Ltd v. NFAC (2022) 213 DTR 249/ 326 CTR 547 (Delhi)(HC)

S.270AA: Immunity from imposition of penalty,etc-Object of the section to encourage / incentivize a tax payer to fast-track settlement of issue and to recover tax demand and reduce protracted litigation-Order set aside and directed the Department to grant immunity under the Act.[S. 270A, 274, Art. 226]

The assessment of the appellant was completed u/s 143(3)of the Act. Show cause notice was issued seeking to levy penalty u/s 270A read with section 274 of the Act for under reporting of income. The assessee submitted application before the AO in Form No. 68 in terms of section 270AA(2) seeking immunity from imposition of penalty under section 270A of the Act. Department passed the order denying the immunity from penalty and prosecution on the ground that since no order under section 270AA had been passed by the jurisdictional Assessing Officer within the statutory time line. On writ the Court held that the object of the section to encourage / incentivize a tax payer to fast-track settlement of issue and to recover tax demand and reduce protracted litigation. Consequently the order passed under section 270A of the Act was set aside the Department was directed to grant immunity under section 270AA of the Act. Relied on Schneider Electric South East Asia (HQ) v.ACIT (IT) (WP (C) 5111 / 2022 (WP(C) 5839/2022 & CM Appl. 17517-17518, dt. 8-4-2022)(AY. 2018-19)

Nirman Overseas Pvt Ltd v. NFAC(2022) The Chamber's Journal-May-P. 79 (Delhi)(HC)

S. 271(1)(b) : Penalty - Failure to comply with notices -Reassessment proceedings were held to be without jurisdiction- Penalty proceedings is also quashed [S. 142(1), 147 , 148]

Held that since quantum proceedings itself were quashed, any non-compliance on part of assessee to respond to notice issued under section 142(1) during such proceedings which were held to be void ab initio and without jurisdiction, would not give rise to any cause of action for validly initiating penalty proceedings under section 271(1)(b) of the Act. Penalty peoceedings were quashed (AY. 2010-11)

Anita Awasthi (Smt) v. ITO (2022) 215 DTR 353 / 218 TTJ 512 / 43 taxmann.com 238 (Varansai)(Trib)

S. 271(1)(b) : Penalty-Failure to comply with notices-Wrong address-Miscommunication-Levy of penalty is not valid.[S. 142(1) 144 148]

Held, that the notice was sent to the wrong address due to which the postal authorities could not deliver the document. A confirmation letter from the postmaster of returning the speed post had been filed. Notice under section 148 was served through affixture which was never received by the assessee as the address was not correct. Further the Assessing Officer kept on issuing notices on the wrong address even when the first notice was not served. There was a miscommunication at the end of the Assessing Officer about the address and failure to mention her husband's name resulted in non-serving of the notice since she resided in village. Penalty was deleted.(AY.2010-11)

Manjit Kaur (Smt.) v ITO (2022)93 ITR 711 (Amritsar) (Trib)

S. 271(1)(c) : Penalty-Concealment-Sanction of Joint Commissioner-Definition-Includes Additional Commissioner-Sanction of Additional Commissioner obtained-Penalty proceedings validly initiated [S.28C), 260A, 271(1)(c), 274(2)

Held, dismissing the appeal, that considering the definitions contained in section 2(28C) read with section 274(2) of the Act "Joint Commissioner" means a person appointed to the post of Joint CIT and includes the Additional CIT. Since the approval of the Additional Commissioner had been obtained, there was no reason to interfere with the findings recorded by the High Court on the powers of the Additional Commissioner to grant the approval sought by the Assessing Officer for imposing penalty under section 271(1)(c) of the Act.(AY. 1998-99)

Gyan Chand Jain v. CIT (2022)443 ITR 241 / 213 DTR 71/ 326 CTR 241/287 Taxman 87 (SC)

S.271(1)(c): Penalty-Concealment-Mere acceptance of sales figures by VAT Authority cannot be a sufficient ground to hold that the cash sales were in fact genuine so as to delete the levy of penalty.[S.80IC]

The assessee engaged in the business of essential oils, claimed a deduction of Rs. 85.31 crores u/s. 80-IC whereas in the course of assessment the Department found that the assessee showed cash sales of Rs. 3 crores whereon VAT of Rs. 12 Lacs was remitted. The Department found that the assessee had introduced its unaccounted income in the garb of cash sales as they pertained only to one month with cash bills of Rs. 3 lakhs and Rs. 6 lakhs transferred to partners' account as cash withdrawals in the same month and the buying parties could not be traced. The AO levied penalty u/s. 271(1)(c) for furnishing inaccurate particulars of income which appeal was dismissed by the CIT(A) but the ITAT allowed the appeal filed by the assessee. On an appeal by the Department to the High Court, it was held that: The assessee's contention that the sales bills were backed by sales tax paid challans and sales tax returns and the books of accounts were also accepted by VAT Authorities was rejected by the High Court which observed that merely because the respondent had got order from the VAT Authority, did not in itself make the cash sales genuine and thereby upheld the levy penalty reversing the decision of the Tribunal. (AY. 2006-07)

PCIT v. J. M. J. Essential Oil Company (2022) 216 DTR 273/ 327 CTR 721 (Orissa HC)

S. 271(1)(c) : Penalty-Concealment-Disallowance of short-term capital loss on sale of shares: [S. 45, 94, 260A]

Assessee-HUF claimed short-term capital loss on sale of shares. Assessing Officer held that shares were acquired within period of three months prior to record date and same was sold within 3 months of record date, disallowed said loss as per provisions of section 94(7) of the Act. The assessment was accepted. Penalty was levied.On appeal, Tribunal deleted penalty. On appeal by the Revenue the Court upheld the order of Tribunal. (AY. 2015-16)

PCIT v. Harish Kumar HUF (2022) 288 Taxman 316/ 219 DTR 62/ 329 CTR 781 (Delhi)(HC)

S. 271(1)(c) : Penalty-Concealment-Approval-Procedure-Tribunal was not justified in quashing penalty order passed by Assessing Officer on mere premises that Additional Commissioner did not find place in section 274(2)(b) of the Act.[S. 2(28C), 274(2)]

Allowing the appeal of the Revenue the Court held that on a bare perusal of sections 2(28C) and 274(2) it is clear that Joint Commissioner also includes Additional Commissioner, and, therefore approval granted by Additional Commissioner under section 274(2) on a permission sought by Assessing Officer before imposing penalty under section 271(1)(c) was competent under law and, thus, Tribunal was not justified in quashing penalty order passed by Assessing Officer on mere premises that Additional Commissioner did not find place in section 274(2)(b) of the Act. (1998-99)
CIT v. Gyan Chand Jain (Late) (2022)139 taxmann.com 318 (Raj)(HC)

Editorial : SLP of assessee dismissed **Gyan Chand Jain v. CIT (2022)443 ITR 241 / 213 DTR 71/ 326 CTR 241/287 Taxman 87 (SC)**

S. 271(1)(c) : Penalty-Concealment-Inaccurate particulars-Mistake committed in calculation-Non-Resident-Peak amount offered on account of funds lying in the bank accounts held by JWL and SF with HSBC Bank Zurich-Revised return filed before issue of notice u/s 148 of the Act which was accepted without making addition-Deletion of penalty is held to be valid.[S. 139, 143(3), 148]

The assessee was non-resident. The assessee had filed original return. Thereafter revised the return before receipt of notice u/s 148 of the Act offering the peak amount on account of funds lying in the bank accounts held by JWL and SF with HSBC Bank Zurich. The second revised return was filed showing the additional income. The second revised return was accepted by the Revenue without making any additions. The AO levied penalty of 200% of the tax sought to be levied on the amount declared subsequent to filing of original return. On appeal the CIT(A) deleted the penalty on the ground that the assessee has suo-moto and voluntarily offered additional income to tax and that income which was offered for tax by the assessee in the revised return of income was in any case not chargeable to tax in India. On appeal by the Revenue the Tribunal held that there was mistake in calculating the peak in the revised return which was revised once again. The revised return was accepted without making any addition to income offered. Tribunal affirmed the order of CIT(A).
On appeal by the Revenue High Court affirmed the order of the Tribunal. Referred: Mak Data (P.) Ltd. v. CIT (2013) 358 ITR 593 (SC)(AY. 2007-08)

CIT(IT) v. Ashutosh Bhatt (2022) 287 Taxman 436/ 217 DTR 381 / 329 CTR 541 (Bom.)(HC)
S. 271(1)(c) : Penalty-Concealment-Cash credits-Recording of satisfaction-Show cause notice did not indicate whether there was concealment of particulars of income or furnishing of incorrect particulars of such income-Deletion of penalty is held to be valid [S. 274]

Allowing the appeal the Court held that where show cause notice did not indicate whether there was concealment of particulars of income or furnishing of incorrect particulars of such

income the levy of penalty is not valid. Followed Mohd. Farhan A.Shaikh v.Dy.CIT(2021) 434 ITR 1/ 280 Taxman 334 (Bom)(HC)(FB)

Ganga Iron & Steel Trading Co. v. CIT (2022) 447 ITR 743 /286 Taxman 21 (Bom)(HC)

S. 271(1)(c) : Penalty-Concealment-Charitable trust-Denial of exemption-Show cause notice for issue of concealment penalty-Alternative remedy-Writ is not maintainable [S. 11, 12, 12A, 274, Art, 226]

The registration of the Trust was cancelled in the year 2010. The Tribunal affirmed the order of cancellation and the appeal against the said order is pending before the High Court. The Assessing Officer issued show cause notice u/s 271(1)(c), read with section 274 of the Act. The assessee filed writ petitions challenging the said notices. Dismissing the petitions the Court held that the assessee has to wait for the orders to be passed in the penalty notices. Considering the fact that the assessee had paid disputed tax the NFAC is directed to consider to grant waiver under section 220(6) of the Act. The writ petitions dismissed. In case the orders are passed against the assessee the assessee is directed to avail the alternative remedy of appeal. Refer Order of Tribunal in Aurolab Trust v. CIT (2011) 12 ITR 74 (Chennai)(Trib) (AY. 2011-12, 2013-14, 2014-15, 2016-17)

Aurolab Trust v. NFAC(2022) 445 ITR 645 (Mad)(HC)

S. 271(1)(c) : Penalty-Concealment-Faceless penalty scheme-rejection of request for personal hearing-Order set aside [S. 144B, 274, Art, 226]

Allowing the petition the Court held that the assessee had asked for a personal hearing of its objections. This personal hearing was not a matter of right but was at the discretion of the Chief Commissioner or the Director General in charge of the Regional Faceless Penalty Centre. The order did not say anything about whether the request for personal hearing was acceded to or not. The order was not valid. (The order passed by the first respondent was set aside solely on the ground that a decision regarding the assessee's request for personal hearing had not been decided one way or the other in accordance with the Scheme.)(The Faceless Penalty Scheme, 2021 [2021] 430 ITR (St.) 2)(AY.2016-17)(SJ)

Ramco Cements Ltd. v. NFAC (2022)442 ITR 279 / 327 CTR 231 /215 DTR 199 / 139 taxmann.com 89 (Mad)(HC)

S. 271(1)(c) : Penalty-Concealment-Depreciation-levy of penalty is not justified.[S. 32, 8HHC]

Dismissing the appeal of the revenue the Court held that the assessee had made a claim to depreciation on the strength of the tax audit report, and furthermore, there was a complete disclosure about its claim under section 80HHC supported by the certification issued by the

chartered accountant. Merely because the claim on the merits was not granted, the penalty could not be levied. Followed CIT v. Reliance Petroproducts (P.) Ltd (2010) 322 ITR 158 (SC) (AY.2011-12)

PCIT v. Intas Pharma Ltd. (2022)441 ITR 141 (Guj) (HC)

S. 271(1)(c) : Penalty-Concealment-Transfer pricing-Adjustment for software development services-Deletion of penalty is held to be justified [S. 92C]

Tribunal held that reason for making said adjustments was denial of capacity utilization claimed by assessee, the same could not tantamount to filing of return without good faith and due diligence so as to levy penalty under section 271(1)(c) upon assessee. On appeal High Court affirmed the order of the Tribunal. (AY. 2007-08)

PCIT v. Giesecks & Devrient (India) (P.) Ltd (2022) 285 Taxman 408 / 210 CTR 197/ 325 CTR 117 (Delhi)(HC)

S. 271(1)(c) : Penalty-Concealment –On money-Survey-Income voluntarily offered-Deletion of penalty is held to be justified [S. 131(IA), 133A]

Where pursuant to survey proceedings, the assessee had voluntarily offered certain income to tax, the same would not be liable to penalty. These facts are different from a case where income is offered in a revised return of income after the addition is discovered by the Assessing Officer. (AY. 2013-14)

PCIT v. Shreedhar Associates (2022) 440 ITR 547 (Guj) (HC)

S. 271(1)(c) : Penalty – Concealment - Show cause notice- Not specifying the charge - Notice without striking off inapplicable words- Notice not valid- Penalty order was quashed . [S. 274]

The Assessing Officer had issued a generic show-cause notice in a printed form without mentioning the specific charge by striking off the inapplicable words. Thus, the show-cause notice issued under section 274 read with section 271(1)(c) was a vague and omnibus notice. Hence, the penalty order passed under section 271(1)(c) of the Act was to be declared as invalid. (AY.2010-11)

Dy. CIT v. Thane District Central Co-Operative Bank Ltd. (2022)98 ITR 316 (Mum) (Trib)

Tejpal Singh Bhatia v.ITO (2022) 98 ITR 71 (Lucknow)(Trib))

S. 271(1)(c) : Penalty – Concealment - Bogus purchases – Survey -Additional income declared in the revised return – Penalty was deleted

Allowing the appeal the Tribunal held that there was no concealment or furnishing inaccurate particulars of income as the assessee had made a complete disclosure in the returns and offered the additional amount to tax. The Assessing Officer was directed to delete the penalty.(AY. 2011-12, 2012-13)

Kirloskar Chillers Pvt. Ltd. v. Jt. CIT (2022) 98 ITR 74 (SN)(Pune) (Trib)

S. 271(1)(c) : Penalty – Concealment – Survey – Surrender of income – Included in the return of income – Reported income and assessed income is same – Deletion of penalty is valid [S. 133A]

Dismissing the appeal of the Revenue the Tribunal held that the assessed and returned income remain the same . The levy of penalty is not applicable . The ratio of MAK Data Pvt Ltd v. CIT (2013) 358 ITR 593 (SC) has no application to the facts of the case . (AY. 2013 - 14)

ACIT v. East West Developers (2022) 219 TTJ 53 (UO)/98 ITR 33 (SN) (Pune)(Trib)

S. 271(1)(c) : Penalty – Concealment -Book profit – Prior period expenses – Loss as per regular assessment – Deletion of penalty is valid . [S. 115JB]

Held that the assessee's income under the regular provisions of the Act is loss even after disallowing the claim of prior period expenditure while its income under the MAT regime is positive, the matter is covered by Circular No. 25 of 2015, dt 31st Dec, 2015 . Order of CIT(A) deleting the addition was affirmed .(AY.2008 -09)

Dy. CIT v. Madhya Pradesh Power Generating Co. Ltd. (2022) 217 TTJ 875 / 215 DTR 17 (Jabalpur)(Trib)

S. 271(1)(c) : Penalty – Concealment -Deduction of expenditure - Sale and lease back – Depreciation - Levy of penalty is not valid . [S. 32 , 35E]

Held that the disallowance of expenditure and depreciation cannot be the ground for levy of penalty . (AY.2003-04 to 2006-07)

Gujarat Power Corporation Ltd v .ACIT (2022)99 ITR 42 (SN)(Ahd) (Trib)

S. 271(1)(c) : Penalty – Concealment - Not mentioning nature of concealment in notice — Notice invalid —Levy of penalty is not valid .[S. 274]

Held that the notice did not mention the specific limb. This was a case where both the parts of the offences, i. e., concealment of income as well as furnishing of inaccurate particulars of income were involved. Therefore, the penalty levied was not sustainable.(AY. 2009-10)

Krishan Kumar Sharma v. ITO (2022)100 ITR 78 (Amritsar) (Trib)

S. 271(1)(c) : Penalty – Concealment -Difference between interest declared in books and Form 26AS – levy of penalty is not justified [Form , 26AS]

Held that the addition of difference between interest declared in the books and that shown in form 26AS may not be convincing but the fact remained that the deposits had duly been reflected in the assessee's books of account and a bona fide mistake on the part of the accountant not to tally the interest calculation with form 26AS could not lead to the conclusion that the assessee furnished inaccurate particulars of its income to justify levy of penalty under section 271(1)(c) of the Act. (AY.2013-14)

Dy. CIT v. Jagson International Ltd. (2022)100 ITR 69 (SN) (Delhi) (Trib)

S. 271(1)(c) : Penalty – Concealment -Neither Assessment order nor penalty notice specifying whether proceedings initiated for concealment of income or filing inaccurate particulars of income — Penalty is not valid [S. 274]

Held that neither Assessment order nor penalty notice specifying whether proceedings initiated for concealment of income or filing inaccurate particulars of income .Penalty is not valid . *(* AY.2007-08)
Lear Automotive India Pvt. Ltd. v. ACIT (2022)100 ITR 3 (SN) (Pune) (Trib)

S. 271(1)(c) : Penalty – Concealment – Interest – Donation- of small sums- Penalty not leviable merely because receipts could not be located. [S. 37(1), 80G]
The Tribunal held that the donations of were on account of small and petty donations and therefore, the assessee could not produce the receipts therefor. Penalty could not be levied merely because the receipts could not be located and furnished. The assessee had not committed any concealment to initiate penalty proceedings. (AY. 2011-12).
Gulshan Chemicals Ltd. v. ACIT (2022)97 ITR 59 (SN)(Delhi)(Trib)

S. 271(1)(c) : Penalty – Concealment - Additional evidence - Capital asset –Failure to declare capital gain- Land outside 8 Km- Penalty order set aside- Mater remanded. [S.2(14)(iii)), 275 (1) (C).]
The Tribunal held that the assessee had filed additional evidence to claim that the land was agricultural land and beyond eight kms. Therefore, in the interest of justice, the penalty levied on the issue of sale of land was set aside and the issue remanded to the Assessing Officer with a direction to decide the issue afresh after giving opportunity to the assessee. Order od penalty was set aside. (AY. 2015-16)
Kishor Madhav Paranjape v Dy. CIT (2022) 97 ITR 45 (SN.) (Pune)(Trib)

S. 271(1)(c) : Penalty – Concealment – Transfer pricing - Conducted detailed functions, assets and risk analysis of international transactions- Documentations not rejected- Penalty not warranted. [S. 92C, 92D R.10D]
The Tribunal held that the assessee had computed the arm's length price in respect of the international transactions in good faith and with due diligence. There was no infirmity in the order passed by the Commissioner (Appeals) directing deletion of penalty levied under section 271(1)(c) of the Act.(AY. 2009-10).
Dy. CIT v. Sitel India Ltd. (2022)97 ITR 65 (SN)(Mum) (Trib)

S. 271(1)(c) : Penalty – Concealment – Addition deleted- Income deleted by Tribunal could not be held as considered for imposition of penalty.[S.274]
The Tribunal held that that the order passed by the Tribunal in the appeals arising out of the assessment not having been reversed or modified by the High Court in any manner, the income added by the Assessing Officer but deleted by the Tribunal could not be considered for imposition of penalty for the simple reason that no such addition existed warranting the penalty. (AY. 2008-09 to 2010-11)
Maharashtra Academy of Engineering and Educational Research v .ITO (2022)97 ITR 31 (SN)(Pune) (Trib)

S. 271(1)(c): Penalty – Concealment - Penalty notice not specific whether it is a Concealment of income of furnishing of incorrect particulars of income- No intention of making inaccurate gains by assessee- Deletion of penalty is held to be justified .[S. 274]
The penalty notice issued by the Assessing Officer was vague and ambiguous. No motive of the assessee which was suffering a huge loss. Assessing Officer . did not bring on record any evidence showing inaccurate or false particulars of expenses. Assessing Officer relied only on 'Tax Audit Report' without recording the statement his satisfaction. Deletion of penalty is held to be justified . (AY. 2013-14)

Dy. CIT v .Future E-Commerce Infrastructure Ltd. (2022)97 ITR 508 (Mum) (Trib)

S. 271(1)(c) : Penalty – Concealment – Inaccurate particulars of income- Deemed dividend taxed in the hands of assessee- Question in whose hands dividend to be taxed-cannot be subject matter of penalty for irregular particulars of income- Penalty levied incorrect. [2(22)(e)]
The Tribunal confirmed that the addition had been made in the deeming provision and was debatable. Such a highly debatable issue could not be the subject matter of penalty for filing inaccurate particulars of income or concealment of income when the facts were very much available with the Assessing Officer. Order of CIT(A) deleting the penalty was affirmed . (AY.2004-05 to 2006-07)
ITO v . Chetan Seth (2022)97 ITR 597 (Delhi) (Trib)

S. 271(1)(c): Penalty – Concealment - Notice not specifying the charge for which penalty was being levied — Levy of penalty is not justified .

The Tribunal held that the charge was not specific for which penalty was levied under section 271(1)(c) of the Act. The notice specified both charges, i.e., concealment of income and furnishing of inaccurate particulars of income and did not specify the charge for which action had been taken against the assessee. The non-specific nature of the notice indicated non-application of mind by the Assessing Officer. Therefore, there was no infirmity in the order of the Commissioner (Appeals) deleting the addition. (AY. 2002-03 to 2007-08)

Dy. CIT v. Scooters India Ltd. (2022) 96 ITR 460 (Lucknow) (Trib)

S. 271(1)(c): Penalty – Concealment - Estimate of income at 20 % of receipts – Levy of penalty is not valid [S. 44BBB]
The Tribunal held that merely because the assessee on bona fide belief or misconception that it did not have permanent establishment in India or on the basis of certificate issued under section 197 of the Act by the Department, had chosen to compute the tax payable on its income under section 44BBB of the Act, that itself could not entail the imposition of penalty. Therefore, the penalty imposed was to be deleted. (AY. 2004-05, 2005-06)

Lahmeyer Holding Gambh v . Dy. CIT (2022)96 ITR 455 (Trib) (Delhi) (Trib)

S. 271(1)(c): Penalty – Concealment - Assessing Officer in body of assessment order initiating proceedings for penalty for default of concealment of income — Imposition of penalty qua solitary addition for both defaults —Levy of penalty is not valid .

It was held that the two defaults, concealment of income and furnishing of inaccurate particulars of income, are separate and distinct defaults which operate in their exclusive fields and the imposition of penalty by the Assessing Officer qua the solitary addition for both defaults contemplated in section 271(1)(c) of the Act was not sustainable. When the Assessing Officer while completing the assessment had in the body of the assessment order initiated the penalty proceedings under section 271(1)(c) for the default of concealment of income, there was no justification on his part in imposing penalty for both defaults, concealment of income and furnishing of inaccurate particulars of income. The order imposing penalty of Rs. 31,730 imposed by the Assessing Officer under section 271(1)(c) was liable to be quashed.(AY. 2013-14, 2014-15)

Vikash Nashine v Dy. CIT (2022)96 ITR 68 (SN) (Raipur) (Trib)

S. 271(1)(c): Penalty – Concealment - Penalty Levied by Assessing Officer on two counts of disallowance — Tribunal deleting disallowance on one count and remanding matter on other to Assessing Officer — Deletion of penalty by Commissioner (Appeals) is justified .[S. 10AA]

The Tribunal held that penalty had been levied by the Assessing Officer on the basis of two disallowances made by the Assessing Officer. The Tribunal had deleted the disallowance under section 10AA of the Act. Merely, because the point had been agitated before the High Court, penalty could not be levied. As on date the addition did not stand and the penalty to that extent had been correctly deleted by the Commissioner (Appeals). With respect to disallowance of loss on option premium allocated to the special economic zone unit the Tribunal had remanded the matter to the Assessing Officer. If in the set-aside proceedings, the Assessing Officer was satisfied that there was concealment of income or furnishing of inaccurate particulars of income, he had the power to initiate penalty proceedings. However, at the present stage, there was no infirmity in the order of the Commissioner (Appeals) deleting the penalty under section 271(1)(c) of the Act. (AY. 2011-12)

ACIT v. SJR Commodities and Consulting Pvt. Ltd. (2022)96 ITR 64 (SN) (Mum) (Trib)

S. 271(1)(c) : Penalty – Concealment –Bogus purchases – Income estimated of 30% of purchases – Levy of penalty is held to be not valid .

Tribunal held that when the addition is made on estimated basis , levy of penalty is not valid . (AY. 2009 -10)
Grand Prix Engg . Pvt Ltd v . Dy.CIT (2022) 95 ITR 505(Delhi)(Trib)

S. 271(1)(c) : Penalty – Concealment - Inadvertently claiming deduction of Corporate Social Responsibility-Suo motu filing revised computation during assessment proceedings — Levy of

Held that Explanation 2 to section 37 was introduced by the Finance (No. 2) Act, 2014 with effect from April 1, 2015 disallows the expenditure incurred on the activities relating to corporate social responsibility referred to in section 135 of the Companies Act, 2013 . The assessment year in question was the first year wherein this amendment had taken effect, and prima facie the assessee's claim appeared to be a bona fide mistake. The assessee had made disclosure about the claim made in the computation of income and during the assessment proceedings had rectified the mistake by filing a revised computation. The mistake in claiming corporate social responsibility expenditure was not pointed by the Assessing Officer. This was not a fit case for levy of penalty under section 271(1)(c) of the Act. AY.2015-16)

Sterling Investment Corporation Pvt. Ltd. v. CIT (A) (2022)95 ITR (SN) 25 (Mum) (Trib)

S. 271(1)(c) : Penalty – Concealment -Notice issued without specifying limb -Levy of penalty not valid [S. 274

Held that the manner in which the Assessing Officer had issued notice under section 274 read with section 271(1)(c) of the Act without specifying the limb under which the penalty proceedings had been initiated and proceeded with, proved that notice had been issued in a stereotyped manner without applying mind and could not be considered a valid notice sufficient to impose penalty under section 271(1)(c) of the Act. The penalty levied by the Assessing Officer and affirmed by the Commissioner (Appeals) was to be cancelled.(AY.2013-14)

Vibracoustic India Pvt. Ltd. v. Add. CIT (2022) 95 ITR 31 (SN)(Delhi) (Trib)

S. 271(1)(c) : Penalty – Concealment -Addition on account of deeming provision-Neither concealment of income not furnishing inaccurate particulars of income — Penalty not sustainable. [S.50C]

Held that the increase of value by the Assessing Officer in the full value consideration did not amount either to concealment of particulars of income or furnishing inaccurate particulars of income. The additions made on the value of the Deputy Registrar's office being the deemed value and the additions on such deemed value accepted by the assessee could not be said to be furnishing of inaccurate particulars for levy of penalty of concealment under section 271(1)(c) . The penalty levied by the Assessing Officer under section 271(1)(c) of the Act was not sustainable.(AY.2012-13)

Virendra Singh Verma v. ITO (2022)95 ITR 83 (SN)(Jaipur) (Trib)

S. 271(1)(c) : Penalty – Concealment -Not struck off irrelevant limb in penalty notice – Original penalty proceedings are vitiated – Direction to enhance penalty will not survive [S. 250, 251 , 274]

Certain additions were made in the quantum assessment proceedings and for the purpose of initiating penalty proceedings the AO had recorded his satisfaction as 'concealment of income/furnishing of inaccurate particulars of income'. Penalty was levied only for

'furnishing inaccurate particulars of income'.CIT(A) upheld the said penalty and also directed the Assessee to enhance the penalty on certain income whichwas not taken into account by the AO for the purpose of levying penalty.
Regarding, the original penalty levied by the AO, theHon'ble Tribunal relying on the decision of Jurisdictional High Court in the case of Mohd. Farhan A. Shaikh v. Dy.CIT (2021) 125 taxmann.com 253 (Bom)(HC) and certain other decisions; held that since the specific limb for which penalty proceedings were initiated was not clearly specified in the notice issued under section or the irrelevant limb was not striked off; the levy of the said penalty was bad in law.
Regarding the directions of the CIT(A) to enhance the penalty; the Hon'ble Tribunal held that powers conferred upon CIT(A) under section 251(1)(b) *inter-alia* covers power to enhance the penalty; such enhancement was valid even when there was no enhancement of income made by the CIT(A).
However, it was held that since the original penalty proceedings were quashed for non-striking of irrelevant limbs of section 271(1)(c); the notice issued under section 274 stood vitiated. Consequent to this, there was no valid initiation of penalty proceedings; accordingly, even direction for enhancement of penalty by CIT(A) would not survive. (AY.2006 -07)
Neelesh Satish Kanade v. ACIT (2022) 214 DTR 345 / 218 TTJ 641 (Pune)(Trib)

S. 271(1)(c) : Penalty – Concealment -Disclosure of income surrendered during survey in the return — Mandate of Expln. 1 to S. 271(1)(c) – Income declared in survey cannot constitute bedrock for imposition of penalty- Penalty was deleted . [S. 133A]

The Tribunal, allowing the assessee's appeal, held that in the absence of any addition or disallowance made by the AO in the computation of total income, there can be no question of any penalty on the income suo motu offered by the assessee in his return of income. In view of the fact that the assessee voluntarily offer the income declared in the survey under s. 133A, in the return of income at the assessment was made without making any addition on that score, such an income cannot constitute the bedrock for the imposition of penalty under 271(1)(c). (AY. 2013-14)

Prakash Mithalal Oswal v. ITO (2022) 214 DTR 169 / 218 TTJ 398 (Pune)(Trib)
Editorial: MAK Data (P) Ltd. v. CIT (2013) 358 ITR 593 (SC) distinguished.

S. 271(1)(c) : Penalty-Concealment-Software maintenance-Royalty-Fees for technical services-Divergent views-Levy penalty is not valid.[S. 9(1)(vi), 9(1)(vii)]
Held that whether software maintenance charges received by assessee as royalty / fees for technical services,whether taxable or not divergent views, levy of penalty is not valid (AY. 2013-14)
ACIT v. Faurecia Systems D'echappement. (2022) 98 ITR 124 / 197 ITD 687 / 220 TTJ 396/ 218 DTR 353 (Pune) (Trib.)

S. 271(1)(c) : Penalty-Concealment-Mortgaged property-Auctioned by bank-Capital gains not shown-Guarantor-Difference view-Levy of penalty is not valid-Appeal admitted-Penalty cannot be deleted automatically. [S. 2(47) 45, 48, 260A]
Held that when the assessee stood guarantor for a bank loan and his mortgaged property was taken over and sold in auction by the bank, since there were conflicting judicial precedents on the issue under consideration as to whether the transfer of mortgaged asset would amount to transfer of an asset or not where no consideration flew to the assessee, assessee's view that no capital gains accrued in his hands would be a plausible one and no penalty could be levied for

non-disclosure of capital gains. Merely because appeal is admitted by High Court, penalty cannot be deleted automatically. (AY. 2011-12)
Ajaybhai I Gogia v. ITO (2022) 195 ITD 301 (Rajkot) (Trib.)

S. 271(1)(c) : Penalty-Concealment-Not specifying the charge-Bogus purchases-Levy of penalty is not valid [S. 153A, 274]

Assessment under section 153A/143(3) was completed by making certain additions which included addition on account of bogus purchases. On appeal, it was held that purchases as per seized material were unaccounted purchases made and used for unaccounted turnover either by way of trading or manufacturing, and accordingly addition was sustained. Assessing Officer issued notice calling upon assessee to explain why penalty under section 271(1)(c) shall not be levied. Assessee submitted that levy of penalty on basis of notice was vague and illegal and not justified as it did not specify whether penalty was for furnishing inaccurate particulars or concealed income.CIT(A) affirmed the order of the Assessing Officer. On appeal the Tribunal held that for Assessing Officer to assume jurisdiction under section 271(1)(c), proper notice is necessary and defect in notice under section 274 vitiates assumption of jurisdiction by Assessing Officer to levy any penalty. Penalty was deleted. (AY. 2011-12)
ACIL Ltd. v. ACIT *(*2022) 194 ITD 708 (Delhi) (Trib.)

S. 271(1)(c) : Penalty-Concealment-Disallowance of claim-mistakenly not added foreign exchange fluctuation amount to his income-Levy of penalty is not valid.

Held that where the assessee had mistakenly not added foreign exchange fluctuation amount to his income, levy of penalty is not valid.(AY. 2012-13)
Vimalachal Print & Pack (P.) Ltd. v. DCIT (2022) 194 ITD 671 (Ahd) (Trib)

S. 271(1)(c) : Penalty-Concealment-Wrong claim-Bogus claim of return-Mistake of consultant-Levy of penalty is not valid-Matter remanded.[S. 132, 132(4),143(1)]

In the return of income the assessee claimed bogus claim of refund. In the search proceedings the tax consultant in his statement u/s 132(4) admitted that he has made bogus claims in many returns filed by him and got refunds from the department. The AO relying on the statement issued notice u/s 148 of the Act. In response to notice the assessee filed revised return accepting the mistake and paid the tax. The AO accepted the return and levied the concealment penalty.CIT(A) affirmed the order of the AO. On appeal the Tribunal held that it was consultant who was instrumental in claiming fraudulent refund on behalf of the assessee by indulging in malpractices. Accordingly the matter was remanded to the file of CIT(A) to consider the facts whether the consultant was solely responsible for such fraudulent act and that the assessee's act is bonafide, then the penalty cannot be levied on the assessee. (ITA No. 308/Bang/ 2021 dt.18-3 2022)(AY. 2015-16)

Jaison Kundu Kulam Johny v.ITO (2022) The Chamber's Journal-April-P. 103 (Bang)(Trib)

S.271(1)(c) : Penalty-Concealment-Non-striking off of relevant limb-lack of recording proper satisfaction by AO whether there was concealment of income or furnishing of inaccurate particulars of income by the Assessee-Non application of mind by AO-Levy of penalty is not valid.[S. 274]

Held that while levying penalty for concealment, the AO has to record satisfaction and thereafter come to a finding in respect of one of the limbs which is specified u/s 271(1)(c) of the Act, namely, whether the assessee has concealed the income or furnished inaccurate particular of income.No such specific finding was given by the AO in the present case, which shows non application of mind by the AO, thus vitiating imposition of penalty. (AY. 2006-07)

Proform Interiors Pvt. Ltd. v. ACIT (2022) 94 ITR 63 (SN)(Delhi) (Trib)

S. 271(1)(c) : Penalty-Concealment-Bonafide mistake-Claim with respect to Long term capital loss-

The Assessee had claimed a long term capital loss on the gift of property to his son. On being confronted by the AO, the Assessee admitted it being a typographical error on the part of Chartered Account and accepted the addition made to his income. Subsequently, a penalty was imposed. The Tribunal held that the amount of capital loss was duly mentioned in the computation of income, therefore there was no concealment of income on part of the Assessee. The Tribunal came to the conclusion that the claim of long term capital loss was an incorrect or wrong claim but not a false claim since there was no concealment of income by assessee. (AY. 2014-15)

Pawan Garg v. ACIT (2022) 94 ITR 159 /217 TTJ 20(SMC) (Chd) (Trib.)

S. 271(1)(c) : Penalty-Concealment-Valuation of closing stock-Less than cost price-Levy of penalty was quashed.

Held that the assessee had valued the closing stock at lower than the cost price on account of deterioration of old stock. The Assessing Officer has not accepted such valuation made by the assessee mainly on the ground that since the assessee was valuing the closing stock at cost method that should have been adopted. There was no case of conscious concealment of any income by the assessee nor furnishing any inaccurate particulars of income by the assessee. The books of account had not been rejected, nor a case of creating false evidence made out. The order of penalty was liable to be quashed.(AY. 2010-11)

Sheth Ship Breaking Corporation v. JCIT (2022)94 ITR 38 (SN)(Ahd) (Trib)

S. 271(1)(c) : Penalty-Concealment-Relevant limb specifying charge not struck off-Penalty not leviable :

Held, that the notice was an omnibus show-cause notice as it did not strike off or delete the inapplicable portion. Such a generic notice betrayed a non-application of mind. Therefore, the penalty levied pursuant to such a notice was not legally sustainable in law.(AY. 2009-10 to 2013-14)

Shoreline Hotel Pvt. Ltd. v. Dy. CIT (2022)94 ITR 18 (SN)(Mum)(Trib)

S. 271(1)(c) : Penalty-Concealment-Co-Operative Bank Disallowance of claim-Levy of penalty is not valid [S. 36(1)(viia)]

Held that mere disallowance of excess claim for want of creation of requisite provision did not amount to furnishing inaccurate particulars of income, nor could it be said a false claim. There was no finding by the Assessing Officer in what manner the assessee had furnished inaccurate particulars of income. Order of CIT(A) is affirmed.(AY.2009-10)

ITO v. Karad Janata Sahakari Bank Ltd. (2022)93 ITR 79 (SN) (Pune) (Trib)

S. 271(1)(c) : Penalty-Concealment-Co-operative Society-Interest income from Nationalised Banks incorporated in financial statements-Shown as income from other sources-Levy of penalty is not valid [S.80P(2)(a)(i)]

Held that there was no evidence suggesting that the explanation offered by the assessee was false. Thus the claim of the assessee could not be said to amount to concealment of particulars of income. Likewise, there was no finding of the authorities below qua the fact that the assessee failed to substantiate the explanation offered by him and failed to prove that such explanation was bona fide with respect to material facts relating to the computation of total income. Thus the provisions of Explanation 1 to section 271(1)(c) of the Act were not attracted. Order levying penalty was set aside.(AY.2013-14)

Karamsad Nagrik Co-Op. Credit Society Ltd. v.Dy. CIT (2022)93 ITR 17 (SN) (Ahd) (Trib)

S. 271(1)(c) : Penalty-Concealment-Not referring specific charge in the notice or assessment order-Levy of penalty is not valid.

Held that the Assessing Officer had neither mentioned in assessment order nor in his penalty notice as to whether penalty was initiated for concealment of income or for furnishing inaccurate particulars of income and he had also not mentioned in order that he intended to levy penalty under Explanation 5 of section 271(1)(c), said penalty under section 271(1)(c) was not justified and was to be deleted.(AY. 2014-15, 2015-16)

Chandra Suresh Kothari. v. DCIT (20220 193 ITD 547 (Nagpur) (Trib.)
Unicare Developer and Infrastructure Pvt. Ltd. v. ITO (2022)93 ITR 55 (SN)(Delhi) (Trib)

S. 271(1)(c) : Penalty-Concealment-Addition based on stamp valuation-Deeming section-Levy of penalty is not valid.[S. 56(2)(x)]

Allowing the appeal the Tribunal held that when the addition is made under deeming section and the Revenue has not established that the receipt of money over and above consideration, the levy of penalty is not justified. (ITA.No 490/Ahd /2020 dt. 31-8-2022 (AY.2006-07)

Dipakumar Ishwarlal Panchal (2022)The Chamber's Journal-November P.80 (Ahd)(Trib)

S. 271AAA : Penalty - Search initiated on or after 1st June, 2007 - Disclosure not made in statement recorded during search but pursuant to search action and not voluntary — Penalty justified [S. 132(4) 271AAB]

The AO levied the penalty .On appeal the Commissioner (Appeals) recorded the finding that the assessee did not make the disclosure under section 132(4) and that the disclosure was fundamentally a conseuence of the search whereby certain irregularities were detected by the Investigation Wing and the assessee made the disclosure to cover hitherto undisclosed earnings, and sustained the penalty holding that there was no element of voluntary disclosure per se. Tribuunal affirmed the order of the CIT(A) .

(AY.2012-13)

Mothers Pride Educational Personna P. Ltd. v. ACIT (2022)100 ITR 44 (SN)(Delhi) (Trib)

S. 271AAA : Penalty - Search initiated on or after 1st June, 2007 -Undisclosed income — Surrender of income -Addition not based on material discovered during search in any form — Penalty is not valid .[S. 132 (4), 153A]

Held that the addition of Rs. 40 lakhs was not based on any material discovered during search in any form described therein the definition of undisclosed income under section 271AAA of the Act. Based on the bald statement of B, Rs. 3.78 crores (out of Rs. 34 crores) was admitted which included Rs. 40 lakhs. Since Rs. 40 lakhs could not be attributed to any money, bullion, jewellery, article or transaction or entry or documents which had not been recorded in the books for the previous year when searched, the sum could not fall in the ken of the definition of undisclosed income for the purpose of levying penalty under section 271AAA of the Act. The amount of Rs. 40 lakhs had been brought to tax by the Assessing Officer though not shown by the assessee in the return of income, the penalty under section 271AAA of the Act could not be legally sustained.(AY.2012-13)

Garg Brothers Pvt. Ltd. v. Dy. CIT (2022)95 ITR 18 (SN)/ 217 TTJ 127 /212 DTR 256(Kol) (Trib)

S. 271AAB: Penalty -Search initiated on or after 1st day of July 2012- Undisclosed income- Assessing Officer initiated penalty proceeding without mentioning specific charge- Show cause notice issued in routine manner- Penalty levied is void ab initio. [S.274]

The Tribunal observed that that it was evident from the show-cause notice Assessing Officer was not clear as to on what precise charge the assessee was asked to show cause against. The Assessing Officer had just mentioned "deliberately concealed the true income". Thus, the Assessing Officer without mentioning the specific default of the assessee in terms of clause (a), (b) or (c) of section 271AAB (1) of the Act, had issued the show-cause notice in a routine manner. The notice could not be considered a valid notice in the eyes of law and accordingly the levy of penalty against the assessee was void ab initio. (AY. 2016-17).

Mahaveer Prasad Agarwal v. Dy. CIT (2022)98 ITR 200 (Jaipur) (Trib)

S. 271AAB : Penalty- Search initiated on or after 1st day of July 2012-Surrender of income-Neither surrendered income nor penalty was initiated on the basis of undisclosed income found during search-Levy of penalty is not valid [S. 132]

Held that where assessee had neither made any surrender of any undisclosed income during search, nor penalty had been initiated on basis of undisclosed income found during such search, impugned order of Assessing Officer imposing penalty on assessee under section

271AAB did not pass mandate of provisions of section 271AAB, therefore, same being bad in law was to be quashed. (AY. 2014-15, 2015-16)
Chandra Suresh Kothari. v. DCIT *(*2022) 193 ITD 547 (Nagpur) (Trib.)

S. 271B :Penalty-Failure to get accounts audited-Stay-Technical glitches Natural justice-Advancement in technology cannot hamper the cause of justice-Directed not to take coercive action [S. 246A Art, 226]

The assessee filed an appeal before the appellate authority against a penalty order u/s 271B of the Act. However, the assessee was unable to file the stay application owing to technical glitches in absence of a link to upload the stay petition electronically. Held that advancement in technology cannot hamper the cause of justice. Accordingly, the revenue authorities were directed to make the relevant updates on the technological front and permit interim applications to be filed or uploaded by the assessee accordingly. It was also directed that no coercive action will be taken by the revenue authorities in the interim.

Elavally Service Co-Operative Bank Ltd. v. CIT(A) (2022) 213 DTR 453 / 326 CTR 860 (Ker)(HC)

S. 271B :Penalty- Failure to get accounts audited –No finding in the assessment order - Levy of penalty after 30 months after completion of the assessment – Barred by limitation . [S.44AB , 275 (1)(c)]
Assessment was completed on 31st Dec, 2011. The penalty notice was issued on 16th June, 2014 i.e. after two and half years from the assessment order .Levy of penalty by the AO after passage of 30 months after the completion of the assessment was barred by limitation especially when there was no finding in the assessment order for levy of penalty.(AY.2009-10)
Jila Sahakari Kendriya Benk Maryadit v. ITO (2022) 219 TTJ 17 (UO)/ 99 ITR 156 (Raipur)(Trib)

S. 271B :Penalty- Failure to get accounts audited -Limitation- Notice issued two and half years after assessment order passed — Barred by limitation. [S. 44AB]
Held, that there was no finding in the assessment order for levy of penalty for the default under section 271B of the Act and it was not disputed that after passing of the order on December 31, 2011, the notice was issued only on June 16, 2014 after two and half years after the assessment was completed, which was very abnormal time to fasten the liability on account of alleged default. In between there was no notice and even the assessment order was silent on the levy of the penalty. Therefore, the levy of penalty 30 months after the completion of the assessment, was barred by limitation and the penalty levied under section 271B of the Act was deleted.(AY. 2009-10)
Jila Sahakari Kendriya Bank Maryadit v. ITO (2022) 99 ITR 156 /219 TTJ 17 (UO)(Raippur)(Trib)

S. 271B :Penalty-Failure to get accounts audited-Derivative transaction-Turnover-Guidance note issued by ICAI on tax audit under section 44AB net result in derivative transaction to be considered as turnover-Not liable for penalty [S. 44AB]
Assessee-individual entered into shares and derivative transaction in relevant assessment year.Assessing Officer held that total turnover/gross receipts of assessee was Rs. 82 crores

and assessee was liable to get his accounts audited under section 44AB and levied the penalty for failure to get tax audit report. Held that since assessee was under bona fide belief that as per Guidance Note issued by ICAI on 'tax audit under section 44AB' net result in derivative transaction was to be considered as turnover and as same did not exceed more than Rs. 1 crore, assessee would not be liable to get his books audited thus, penalty levied under section 271B is directed to be deleted. (AY. 2016-17)
Sachin Marotrao Rangari. v. ACIT (2022) 197 ITD 358 (Rajkot) (Trib.)

S. 271B :Penalty-Failure to get accounts audited-Co-Operative Society-Receipt of Grant-In-Aid from Government of Maharashtra at predetermined rates on which tax deducted at source-Accounts audited under Co-Operative Societies Act-If amount of grant-in-aid excluded, turnover below limit specified-Reasonable cause for not getting accounts audited-Levy of penalty is not valid.[S. 44AB, 273B]
Held, that the assessee had received a grant of Rs. 81.38 lakhs from the Government of Maharashtra and the turnover of milk and cattle feed stood at Rs. 84.34 lakhs. It had maintained proper books of account as prescribed under the provisions of Maharashtra Co-operative Societies Act, 1960 which were duly audited according to the provisions of that Act. The grant-in-aid received from the Government of Maharashtra was at predetermined rates and tax had been deducted at source thereon under section 194C. If the amount of grant-in-aid was excluded, the regular turnover of the assessee was below the limit specified under section 44AB. The assessee got its accounts audited under the Co-operative Societies Act. Prima facie the assessee entertained a bona fide belief that the amount of grant-in-aid received was not includible for the purposes of computing turnover under section 44AB. Thus, there was a reasonable cause for the assessee in not getting the accounts audited under section 44AB and since the penalty section was covered under section 273B, penalty under section 271B was not required to be levied.(AY.2014-15)

Raje Dudh Utpadak Sahakari Sanstha Ltd v. ITO (2022)93 ITR 67 (SN)(Pune) (Trib)

Shriram Dudh Vyvasayaik Sahakari Sanstha Ltd. v. ITO (2022)93 ITR 67 (SN)(Pune) (Trib)
Shriram Sahakari Dudh Utpadak Shstha Ltd v. ITO (2022)93 ITR 67 (SN)(Pune) (Trib)

Dhaval Singh mohite Patil Sahakari Dudh Utpadak Sanstha Ltd v. ITO (2022)93 ITR 67 (SN)(Pune) (Trib)

Shri Siddhanath Dudh Utpadak Sahakari Sanstha Ltd v. ITO (2022)93 ITR 67 (SN)(Pune) (Trib)

Sonar Siddha Sahakari Dudh Utpadak Sanstha Ltd v. ITO (2022)93 ITR 67 (SN)(Pune) (Trib)

S. 271B :Penalty-Failure to get accounts audited-Project completion method-Advance received-Not turnover or gross receipt-Bonafide belief-Failure to get audited-Levy of penalty is not valid [S. 44AB]

Assessee, an individual, engaged in business of construction filed her return of income declaring loss. Assessing Officer held that the assessee was a developer and had incurred huge expenditure by way of compensation as well as received advance for various projects and, therefore, looking at total business receipt, assessee should have got her accounts audited under section 44AB, which admittedly was not done by assessee; hence, he initiated penalty proceedings under section 271B of the Act. CIT(A) affirmed the order of the Assessing Officer. On appeal the Tribunal held that assessee was following project completion method, assessee had shown cost of project as work-in-progress and advances received for sale of property had been disclosed and thus, was under a bona fide belief that provisions of section 44AB did not apply and hence, no audit under section 44AB was got done. This being aa reasonable cause penalty levy of penalty is not valid. (AY. 2012-13)

Sushila Sureshbabu Malge (Smt.) v. ITO (2022) 193 ITD 416 (Mum)(Trib.)

S. 271BA :Penalty-Failure to furnish reports-International transaction-Transfer pricing-Bona fide belief-levy of penalty deleted [S.92CA, 92E]

Assessee-firm had entered into an international transaction. The assessee had not furnished report of accountant as required under section 92E of the Act. Assessing Officer levied penalty u/s 271BA of the Act. Assessee contended that they were ignorance in regard to legal requirement and had submitted that word 'Specified Domestic Transaction' was inserted in section 92E by Finance Act, 2012, w.e.f. 1-4-2013 which was applicable for first time from assessment year 2013-14 and though assessee obtained Form 3CEB from Chartered Accountant but had failed to upload same electronically, as it was not aware about recent changes and amendments in provision. Further, there were no adjustments made by TPO and he accepted returned income as assessed income and, thus, there was no mala fide in said transaction. Allowing the appeal the Tribunal held that non-uploading of Form 3CEB for first time, being an unintentional bona fide mistake, penalty order confirming was to be set aside. (AY. 2013-14)

Faith Intertrade. v. ITO (2022) 194 ITD 474 (Ahd) (Trib.)

S. 271BA :Penalty-Failure to furnish reports-International transaction-Transfer pricing-Reasonable cause-Penalty cancelled.[S.92E, 273B]

Held that the assessee was under a bona fide belief that it was not required to file form 3CEB but later, on realization of the facts and law, the assessee filed it with the concerned authority. No ill intention of the assessee could be attributed of evading tax or non-compliance with the tax laws as the report was filed as required by the authorities. The provisions of section 273B could be invoked in the case of the assessee as reasonable cause for failure could be substantiated. The assessee was a public sector undertaking and could not be deemed to have any deliberate intention to avoid payment of tax or to follow the statutory provisions. The penalty was cancelled. (AY. 2013-14)

Mahanagar Telephone Nigam Ltd. v. Dy. CIT (2022)94 ITR 44 (SN)(Delhi)(Trib)

S. 271C : Penalty-Failure to deduct at source-Interest on fixed deposits-Agra Development Authority-Statutory Body-Not liable to deduct tax at source-Levy of penalty is not valid [S. 194A(3)(iii)(f), Uttar Pradesh Urban Planning And Development Act, 1973]

The assessee-bank had various fixed deposits of the Agra Development Authority, a statutory body constituted under the provisions of the Uttar Pradesh Urban Planning and Development Act, 1973, under different identifications for many years. For the assessment years 2012-13 and 2013-14, penalty under section 271C of the Income-tax Act, 1961 was imposed on the bank for failure to deduct tax at source on payments of interest on these deposits to the Authority. The Tribunal and the High Court affirmed these orders. On appeal to the Supreme Court :allowing the appeals, that the Agra Development Authority had been constituted under the Uttar Pradesh Urban Planning and Development Act, 1973 and was covered by notification dated October 22, 1970 (Notification No. S. O. 3489 Dated October 22, 1970.)issued under section 194A(3)(iii)(f) of the Income-tax Act, 1961, notifying payments to "any corporation established by a Central, State or Provincial Act" to be exempted from the requirement of tax deduction at source. The orders levying penalty were liable to be set aside.(AY.2012-13, 2013-14)

Union Bank of India v. Add.CIT (TDS) (2022)442 ITR 194/ 211 DTR 308/ 325 CTR 505/ 286 Taxman 353 (SC)

S. 271C : Penalty - Failure to deduct at source - External development charges paid to the Haryana Urban Development Authority – Levy of penalty was deleted .

Order of CIT(A) confirming the levy of penalty for failure to deduct tax at source on external development charges are deleted ..(AY.2017-18)

Signature Builders Pvt. Ltd. v. Add. CIT (2022) 99 ITR 211 (Delhi) (Trib)

S. 271C : Penalty - Failure to deduct at source -Deduction and deposit of tax in subsequent year after receipt of invoices — No Tax evasion or loss of revenue- Penalty not leviable [S.40(a)(ia), 273B , 274]

Held that the assessee had categorically stated before the Joint Commissioner that in the absence of receipt of actual invoices by the last day of the respective financial years, the provision for expenses was based on estimates. As a result, the assessee did not withhold taxes on the year-end provisions for expenses under section 40(a)(ia) . As the assessee had neither claimed nor availed of any benefits of the provision made for expenses and had paid due taxes in full, there was neither any tax evasion nor loss of revenue to the Government. In the absence of any distinguishable features contrary to the view taken by the Commissioner (Appeals), the order of the Commissioner (Appeals) was to be upheld.(AY.2013-14)

ACIT v. Parsons Brinckershoff India Pvt. Ltd. (2022)95 ITR 71 (Delhi)(Trib)

S. 271C : Penalty - Failure to deduct at source -Purchase of immovable property – Reasonable cause – Not aware of the provision - Penalty was deleted.[S.194IA , 273B]

The assessee purchased an immovable property on which TDS obligation arose under S. 194IA of the Act. However, the TDS was not deducted by the assessee. Subsequently, along with the assessment proceedings, a penalty u/s 271C of the Act as also levied by the Revenue authorities.Taking recourse of section 273B of the Act, wherein penalty is not levied if there is a reasonable cause, it was argued that the assessee was not aware of the said section and the compliances to be carried out thereto. Held that even though the general principal is that ignorance of law is not a valid excuse as per the maxim ignorantia legis neminem excusat, at the same time there is no presumption in law that all persons know all the laws, and more so complex fiscal laws concerning taxing statutes. Further, it was held that the provision was introduced to widen tax base and to check evasion of the taxes as an anti-avoidance measure. Since the seller has declared capital gains in the return of income and paid the taxes in the present case, there is no tax evasion and consequent loss of the government. Appeal was allowed and penalty was dropped considering this as a reasonable cause since the malice of tax evasion was not established. Relied on Motilal Padampat Sugar Mills Company Limited v. State of Uttar Pradesh, reported in (1979)118 ITR 326(SC), CIT v. P.S.S. Investments Private Limited (1977) 107 ITR 1(SC). (AY. 2016 -17)

Manish Jaiswal v. ACIT (2022) 216 DTR 36 / 218 TTJ 737 (Varanasi)(Trib)

S. 271C : Penalty-Failure to deduct at source-Reasonable cause-Supplementary commission-Airline-Different views High Courts-Levy of penalty is quashed [S. 194H, 273B, Contract Act, 1872, S. 182, 215, 216]

Held that the liability of an airline to deduct tax at source on supplementary commission had admittedly not been adjudicated upon by the court when the controversy first arose in assessment year 2001-02. While one set of air carriers acted under the assumption that the supplementary commission would come within the ambit of the provisions of the Act, another set held the opposite view. There were contradictory pronouncements by different High Courts which clearly highlighted the genuine and bona fide legal conundrum that was raised by the prospect of section 194H being applied to the supplementary commission. provision must be read with section 273B which excuses an otherwise defaulting assessee from levy of penalties under certain circumstances. There was clearly an arguable and "nascent" legal issue that required resolution by the Supreme Court and, hence, there was "reasonable cause" for the air carriers not to have deducted tax at source at the relevant period. Accordingly the penalty proceedings against the airlines under section 271C of the Act was quashed.(AY.2001-02)

Singapore Airlines Ltd v. CIT (2022)449 ITR 203/ 329 CTR 553/ 220 DTR 1 /(2023) 290 Taxman 139 (SC)

KLM Royal Dutch Airlines v. CIT (2022)449 ITR 203/ 329 CTR 553 / 220 DTR 1 (SC)

British Airways PLC v CIT(TDS) (2022)449 ITR 203 / 329 CTR 553/ 220 DTR 1 (SC)

S. 271C : Penalty-Failure to deduct at source –Mercantile system of accounting-Provision made on estimate basis-Tax was deducted and deposited TDS upon crystallization of liability to pay expenses on receipt of invoices-Penalty is not leviable.[S. 40(a)(ia), 145]

Assessee was engaged in business of providing consultancy services and supply of manpower services to power and infrastructure sector in India and abroad. Assessee created provisions for certain expenses and claimed that tax was deducted when liability to pay such expenses was crystallized on receipt of invoices. Assessing Officer denied said claim on ground that under mercantile system of accounting, accrual of liability for any expenditure was not dependent on receipt of invoices. He held that assessee-company failed to deduct TDS and levied penalty under section 271C of the Act. CIT(A) deleted penalty on ground that taxes were duly deducted and deposited against impugned expenses when liability to pay such expenses was crystallized.Dismissing the appeal of the Revenue the Tribunal held that the assessee has made only provision and there was no crystallisation of income in the hands of the recipient at the end of the financial year. Referred ITO v. DLF Southern Homes (P) Ltd 2017 SCC Online ITAT 148 / DCIT v. Telco Construction Equipment Co Ltd (ITA. 478 /Bang /2012 dt.7-3-2014. (AY. 2013-14)

ACIT v. Parsons Brinckershoff India (P)Ltd (2022) 140 taxmann.com 645 (Delhi)(Trib)

S.271D: Penalty – Takes or accepts any loan or deposit –Limitation - Two specific periods of limitation — End of financial year in which assessment proceedings completed, or six months from end of month in action for imposition of penalty initiated, whichever is later — Penalty order is barred by limitation . [S. 269SS, 273B, 275 (1)(c)]

Held thatunder section 275(1)(c) of the Act, no order for imposing penalty shall be passed after the expiry of the financial year in which the proceedings and in which action for imposition of penalty has been initiated are completed, or six months from the end of the month in which action for imposition of penalty is initiated, whichever expires later. There are two specific periods of limitation for passing a penalty order and the one that expires later should be the outward limit of time by which the penalty order should be passed. In the assessee's case, the penalty proceedings were initiated by order dated December 14, 2017, and the penalty order could not have been passed later than March 31, 2018. The second possible time limit is expiry of six months from the month in which the penalty proceedings were initiated. The penalty proceedings having been initiated by the Assessing Officer in the month of December 2017 the last date by which the penalty order could have been passed was June 30, 2018. The later of the two dates was June 30, 2018. The penalty order having been passed on December 7, 2018, it was barred by limitation of time.(AY. 2015-16)

Sameer Noorullah Khan v. CIT (Appeals) (2022) 98 ITR 42 (SN)(Mum) (Trib)

S.271D: Penalty – Takes or accepts any loan or deposit – Annulment of assessment – Cancellation of penalty is not valid [S. 143(3) ,271E]

CIT(A) cancelled the penalty on the ground that the assessment proceedings in the course of which penalty was initiated have been held to be bad-in-law and annulled. On appeal by the Revenue the Tribunal held that with regard to initiation of penalty under S. 271D or S. 271E there is no requirement that the AO can initiate the penalty proceedings only in the course of any proceedings under the Act. Matter remanded to the file of CIT(A) to decide on merit . Followed CIT v. Hissaria Bros (2007) 291 ITR 244 (Raj) (HC), CIT v. Hissaria Brothers (2016) 386 ITR 719 (SC) . (AY.2009-10 to 2011-12)
Dy. CIT v. C. Gangadhara Murthy v. PCIT (2022) 218 TTJ 19(UO) (Pune)(Trib)

S.271D: Penalty – Takes or accepts any loan or deposit –Non -Resident -50 Per Cent of interest in property – Sale consideration disclosed in the sale deed – No intention to evade the tax -Reasonable cause – Penalty cancelled . [S. 269SS , 273]

Held, allowing the appeal, that the assessee was a non-resident Indian dependent on her 87 year-old father for negotiations of sale of the properties. Her passport details evidenced the date of her arrival in Bangalore on December 24, 2016 and departure on January 4, 2017. The sale deeds were executed within the period of 10 days. The properties sold were held by the assessee from the year 1994. The assessee was finding it difficult to sell these properties since 50 per cent. of the interest in the properties was initially held by her estranged husband. On the date of execution of sale deed, cash was paid. Considering the age of her father, the assessee accepted the cash and closed the deal once and for all. The intention of the assessee was not to defraud the Revenue by violating the provisions of the Act or by evading taxes. This was evident from the fact that the cash receipts had been duly disclosed in the sale deed as well as the Income-tax returns. Due to paucity of time, the urgency and considering various factors that go into finalizing the transaction, the assessee was forced to accept cash to go ahead with the execution of the sale deed. These facts clearly stipulated "reasonable cause" as mandated under section 273B of the Act for violation of the provisions of section 269SS of the Act. The penalty imposed under section 271D of the Act was cancelled.(AY.2017-18)
Anuradha Chivukula Challa (Smt.) v. Addl. CIT (IT) (2022)99 ITR 1 (SN)(Bang)(Trib)

S.271D: Penalty – Takes or accepts any loan or deposit – Limitation- — Action for imposition of penalty initiated by notice — Time for passing of penalty order to be reckoned from that date of initiation —Order is barred by limitation . [S. 271E, 275(1)(c)]
Held, allowing the appeal , the Tribunal held that the assessment order under section 143(3) of the Act was passed on November 5, 2003. The Additional Commissioner on November 15, 2003 issued notice under section 274 read with section 271D of the Act stating that the assessee had violated the provisions of section 269SS of the Act. Therefore, the action for imposition of penalty were initiated on this date. According to

section 275(1)(c) of the Act, the penalty orders should have been passed on or before June 30, 2004, but they were passed on July 30, 2004. However, on January 16, 2004, the Additional Commissioner again issued notice under section 274 read with section 271D of the Act. The first notice and the second notice were identical. Therefore, the penalty order should have been passed on or before June 30, 2004 reckoned from November 15, 2003, but having been passed on July 30, 2004, both orders of the penalty were barred by limitation. The subsequent notice could not be taken for computing the time limit. Followed PCIT v. JKD Capital and Finlease Ltd (2015) 378 ITR 614 (Delhi)(HC) .(AY.2000-01)

Triumph Securities Ltd. v. Add. CIT (2022)99 ITR 58 (SN)(Mum) (Trib)

S.271D: Penalty – Takes or accepts any loan or deposit –Cash payment to wife – Sale consideration – Levy of penalty is not justified [S. 269SS , 271E]

Held that cash payment was made by the assessee to his wife which was part of consideration received by the asseseee on behalf of the wife from the buyer on the sale of immovable property by the wife. Levy of penalty under section 271D is not valid as there is no contravention of section 269SS of the Act . If there is a violation of section 269T provision of section 271E is applicable . (AY. 2010 -11)

Sudhir Kumar Rawat v. ITO (2022) 219 TTJ 1004 / 218 DTR 337 (Jab)(Trib)

S.271D: Penalty-Takes or accepts any loan or deposit –Loan from sister concerns-Payments to labour charges-Reasonable cause-Deletion of penalty is justified [S. 269SS]

Assessee had taken loan of Rs. 1.25 crores in cash from its sister concerns and offered explanation that amounts were taken in cash for making labour payments at far off places and there was an urgency to do so. Assessing Officer rejected explanation and imposed penalty. Commissioner (Appeals) allowed appeal which was up held by the Tribunal. On appeal by Revenue the Court up held the order of the Tribunal.(AY. 2013-14)

PCIT v. Akash Infra-com-Projects (P.) Ltd. (2022) 289 Taxman 300/ 216 DTR 393/ 328 CTR 819 (Orissa)(HC)

S. 271D : Penalty-Takes or accepts any loan or deposit-Amount received from husband-Purchase of plot-Family arrangement-Levy of penalty is not valid [S. 269SS, 273B]

Held that the assessee offered explanation that payment towards construction expenses like purchase of construction material and payment to labourers were required to be incurred in cash. Further, all transactions including cash transactions were duly documented in registered sale deed. Also pooling of family funds was done by assessee due to her family's requirement and as she didn't have any known sources of funds. Tribunal held that since assessee offered a reasonable explanation justifying said cash transactions, penalty could not be levied under section 271D for violation of section 269SS of the Act. (AY. 2009-10

Meera Devi Kumawat. (Smt.) v. JCIT (2022) 193 ITD 250 (Jaipur) (Trib.)

S. 271E : Penalty-Repayment of loan or deposit-Documents which was before the Tribunal which was not brought on record-Matter remanded to the Tribunal for fresh examination.[S.. 269T, 273B]

Assessee, a partnership firm, engaged in business of trading in rubber sheet, rubber crepe, rubber scrap, latex etc. received certain amount during financial year 2007-08 which was repaid on different dates. The Assessing Officer levied the penalty on the ground that the amount was repaid on different dates. The Assessing Officer levied the penalty on the ground that repayment was not made in accordance with requirements of section 269T of the Act. CIT (A) confirmed the order of the Assessing Officer.. Tribunal held that there was no violation of section 269T and that bona fide belief claimed by assessee constitutes reasonable cause for deleting penalty under section 273B and accordingly set aside penalty order. On appeal considering the additional documents brought on record, may invite fresh examination of bona fide belief or reasonable cause that assessee had for not following requirement of law. Matter remanded to the Tribunal for disposal in accordance with la (AY. 2008-09)

CIT v. Assanar & Sons (2022) 285 Taxman 521 (Ker.)(HC)

S. 271G : Penalty-Documents-International transaction-Transfer pricing-Conduct of Assessee can be considered as a reasonable act of an organization acting with prudence under normal circumstances without negligence or inaction or want of bonafides, hence no penalty u/s 271G can be invoked.

The conduct of the Assessee in complying with 12 items out of 16 items as called for by the TPO can be considered as a reasonable act of an organization acting with prudence under normal circumstances without negligence or inaction or want of bonafides. There is no finding recorded by the AO that the conduct of the Assessee lacks bonafide or there was supine indifference on the part of the Assessee in not producing the records called for by the TPO, despite notice and despite fixing time frame and not furnishing all the details was on account of inaction leading to failure on the part of the Assessee to invoke Section 271G of the Act. Therefore, we are of the view that on facts, the Tribunal rightly held in favour of the Assessee by affirming the order passed by the CIT(A). (AY. 2006-07)

CIT v.SSL-TTK Ltd. (2022) 209 DTR 331 (Mad) (HC)

S. 271G : Penalty-Documents-International transaction-Transfer pricing –Valid satisfaction not recorded-Levy of penalty is not valid [S.92CA, 92D, 271(1)(c)]

Held that satisfaction note was recorded by TPO to initiate penalty proceedings under section 271(1)(c) for non-compliance of notice issued to assessee to furnish necessary documents for completion of transfer pricing proceedings under section 92CA instead of section 92D of the Act. Tribunal held that notice was required to be issued under section 92D to attract provisions contained under section 271G, and consequently, when valid satisfaction had not been recorded, no penalty under section 271G could be levied. (AY. 2013-14)

ACIT v. Enhance Ambient Communication (P.) Ltd. (2022) 194 ITD 40 / 220 TTJ 947 **/** 220 DTR 229**(Mum) (Trib.)**

S. 271G : Penalty-Documents-International transaction-Transfer pricing-Bench marking is accepted-Deletion of penalty is valid [S. 92C, R. 10D(1)]

Held that the assessee had made substantial compliance and type of details asked by TPO from assessee was also not available in case of comparables in public domain on identical facts and circumstances for another year, benchmarking of assessee was accepted, deletion of penalty was affirmed.(AY. 2011-12)
ACIT v. DA Jhaveri. (2022) 194 ITD 600 (Mum) (Trib.)

S. 271G : Penalty-Documents-International transaction-Transfer pricing-Transactional Net Margin Method-Bifurcation of profits-Failure to furnish the details-Deletion of penalty is held to be valid.[S. 273B, R. 10D(1)]
Held that on the identical facts and circumstances for the AY. 2011-12, the benchmarking of the assessee having been accepted on identical facts, the assessee had a belief that such information was not required as well as not available, therefore, the assessee had reasonable cause under section 273B of the Act for not maintaining the information.. Deletion of penalty is held to be valid.(AY. 2011-12)

ACIT v. DA Jhaveri (2022)94 ITR 35 (SN)(Mum)(Trib)

S. 271G : Penalty-Documents-International transaction-Transfer pricing-Failure to furnish information within stipulated time-Absence of CFO-Reasonable cause-Penalty was deleted [S.92D(3), 274]

The assessee had failed to furnish documents requisitioned by TPO. Assessee contended that such delay in filing information was due to change of CFO of its company and once new CFO was appointed and was able to take complete charge of things, due compliance was made accordingly.Assessing Officer rejected the reasons and levied the penalty. Held that since absence of CFO in a large organization like assessee was indeed something serious and not a matter of course, explanation given by assessee for delay in filing information ought to have been accepted. Penalty imposed was deleted.(AY. 2014-15)
JSW Energy Ltd. v. DCIT (2022) 197 ITD 417/ 220 TTJ 1 (Mum) (Trib.)

S. 271G : Penalty-Documents-International transaction-Transfer pricing-Diamond industry-Practical difficulties in furnishing segment-wise details of AE segment and non-AE segment-Penalty not leviable.[S.92D(3)]
Held that Considering practical difficulties in furnishing segment-wise details of AE segment and non-AE segment transactions in the diamond industry, no penalty under section 271G could be imposed. Followed ACIT v. D. Navinchandra Exports (P.) Ltd. [2017] 87 taxmann.com 306 (Mum)(Trib). (AY. 2013-14)
DCIT v. Dharmanandan Diamonds (P) Ltd. (2022) 195 ITD 717 (Mum) (Trib.)

S. 272A : Penalty-Delay in filing TDS return-Delay in filing quarterly statements-Not well acquainted with the procedure of e-filing of TDS return-Penalty was deleted.[S. 201, 272(2)(k), 273B]
Held that delay in furnishing TDS quarterly statements as employees of assessee bank were not well acquainted with the procedure of e-filing of TDS return which was made effective

from the assessment year 2008-09, the penalty imposed under section 272A(2)(k) was deleted. (AY. 2009-10)
UCO Bank. v. JCIT (2022) 195 ITD 9 (Delhi) (Trib.)

S. 272A : Penalty-Failure to answer questions-Sign statements-Furnish information-Illness of managing trustee of trust-Reasonable cause-Levy of penalty is not valid [S. 139, 272A(2)(e), 273B]
Held that the assessee was having excess of expenditure over income for all these years and, thus, by not filing return of income within due date specified under Act, there was no loss of revenue to Government. Illness of managing trustee of trust would come under reasonable cause as provided under section 273B for not filing return of income within due date. Levy of penalty is set aside. (AY. 2007-08 to 2010-2011)
National Institute of Women Child & Rural Health Trust. v. JCIT (2022) 194 ITD 214 (Chennai) (Trib.)

S. 275 : Penalty - Bar of limitation - From the date of initiation of penalty proceedings by the competent authority -Penalty order is not barred by limitation – Penalty deleted on merits [S. 269SS, 269T , 271D, 271E , 275(1)(c)]
Held that limitation as per section 275(1) would start from the date of the initiation of the proceedings by the competent authority, which is on 10 th Feb 2017 ; letter dated 12th April , 2016 by the AO initiating the assessee the proposal for initiating penalty proceedings under section 271D is a process anterior to the initiation of the penalty proceedings the argument that time initiation therefrom was not accepted. The penalty order dated 28 th July 2017 was not barred by limitation. The penalty was deleted on merit. (AY. 2010 -11)
Sudhir Kumar Rawat v. ITO (2022) 219 TTJ 1004 / 218 DTR 337 (Jab)(Trib)

S. 275A : Offences and prosecutions-Prohibitory order-Contravention-Power to quash first information report-First information report could not be quashed [S. 132(3), Code Of Criminal Procedure, 1973, S. 155(2)]

Dismissing the application, that it transpired from the contents of the first information report that pursuant to search and seizure conducted on February 5, 2021, an order under section 132(3) of the Income-tax Act, 1961 was served by the authorised officer to the bank to put a stop operation on the bank accounts, fixed deposits and bank locker of the assessee. In spite of the prohibitory order having been communicated to the bank, the first information report disclosed that the same was breached and the assessee operated the bank locker on November 9, 2021 at 11.53 a.m. The fact was validated from the statements of bank officials, the assessee herself as also from the CCTV footage. Further from the reading of the first information report in the instant case, the contents of which had to be accepted as true at this stage and the court cannot inquire into the reliability or genuineness or otherwise of the allegations made therein, it could not be said that no cognizable offence is made out from the contents thereof. The first information report could not be quashed. referred State of Kerala v. O. C. kuttan (1999) 2 SCC 251, Dineshbhai Chandubhai Patel v. State of Gujarat (2018) 3 SCC 104.

H. D. F. C. Bank v. State of Bihar (2022)448 ITR 103 (Pat) (HC)

S. 275B : Offences and prosecutions-Search and seizure-Facility to inspect books of account-Documents-Wilful attempt to evade tax-Denial of adequate facility to the authorised officers empowered under section 132 of the Act were non-cognizable and bailable-Chief executive of the company a Chinese national with no assets or family in India-Look-Out Circular-No extradition treaty with China-Individual being flight risk-Additional directions issued to deposit Rs 5 crores.[S. 132, 123(9B), 276C, 278B]

The company filed a writ petition challenging the provisional attachment orders under section 132(9B) of the Act. The court disposed of the writ petition directing the company, in addition to the fixed deposit receipt of Rs. 100 crores directed to be made by order dated April 21, 2022, to place another fixed deposit receipt of Rs. 100 crores to be renewed automatically from time to time. The Department was directed not to release any refund and the company was directed not to repatriate any royalty or dividend abroad. The respondent filed an application before the trial court seeking quashing of the look-out circular, upon which the trial court passed an order holding that the complaint against the respondent was for commission of offence punishable under section 275B read with 278B of the Act which was a non-cognisable and bailable offence, that the look-out circular could not have been issued citing that complaint, that in the complaint case the respondent had appeared and was admitted to bail, that the departure of the respondent could not be stated to be detrimental to the sovereignty, security and integrity of India, or to bilateral relations with any other country or to strategic or economic interest of India. However, since the respondent did not have any movable or immovable assets in India, none of his family members and relatives resided in India, and there was little incentive for him to come to India once he left the country, the court ordered that in case of resignation, retirement or cessation of employment, etc., of the respondent, the company shall withhold the severance pay or severance package and other incentives and emoluments payable to the respondent and these shall not be released without prior permission of the court. On a writ petition by the Department for stay of the order of the trial court and quashing thereof, citing Office Memorandum dated December 5, 2017 issued by the Ministry of Home Affairs, Foreigners' Division, by which the guidelines in Office Memorandum dated October 27, 2010 for issue of look-out circulars were amended, and contending that permitting the departure of the respondent would affect the economic interest of the country, inasmuch as, the investigation into the evasion of taxes of more than Rs. 600 crores by the company was in progress and the respondent having been the chief executive officer at the relevant time, in terms of section 278B of the Act, was liable to be held guilty of the offence committed by the company and to be proceeded against accordingly qua the alleged commission of the offence punishable under section 276C(1)(i) of the Act which was a non-bailable offence punishable with a maximum sentence of seven years. Held that the offences punishable under section 275B read with section 278B of the Act alleged against the respondent on account of denial of adequate facility to the authorised officers empowered under section 132 of the Act were non-cognizable and bailable. In terms of Office Memorandum dated October 27, 2010 issued by the Ministry of Home Affairs regarding issuance of look-out circulars with regard to Indian citizens and foreigners, no look-out circular could have been issued in relation to an alleged commission of a non-cognizable offence. The Office Memorandum dated October 27, 2010 was amended by Office Memorandum dated December 5, 2017 to the effect that in exceptional cases look-out circulars could be issued even in cases not covered by the guidelines whereby the departure of a person from India may be declined at the request of any of the authorities as mentioned in Office Memorandum dated October 27, 2010, if it appears to such authority based on inputs received that the departure of such person was detrimental to the sovereignty, security or integrity of India or that the same is detrimental to the bilateral relations with any country or to the strategic and/or economic interest of India or if such person is allowed to leave or he

may potentially indulge in an act of terrorism or offences against the State or that such departure ought not be permitted in the larger interest at any given point in time. The allegations against the respondent did not relate to any aspect of the departure of the respondent being detrimental to the sovereignty or security or integrity of India nor to bilateral relations with any country nor to the strategic interest of the country nor was it the case that the respondent was potentially likely to indulge in any act of terrorism or offences against the State or that his departure ought not be permitted in the larger interest at any given point in time. The pro forma for issuance of the look-out circular indicated the nationality of the respondent was of China, that apart from the aspect of the companies having been alleged to make a wilful attempt to evade tax, it had been alleged in the proposal for issuance of the look-out circular that during the course of the search, the companies and their officers and employees had failed to provide adequate opportunity to the authorised officers for examination of the books of account of the companies thus impeding the authorised officers from discharging their duties and that thus the presence of the chief executive officer (the respondent) was necessary during the course of further investigation which would be carried out and that the on-going investigation into various violations committed by the companies would take ample time due to the examination of extensive evidence that had been seized and due to offences committed by the companies and their employees thus necessitating the issuance of the look-out circular, inter alia, against the respondent. The approval accorded to the issuance of the look-out circular took into account the aspect of the respondent being a flight risk from whom a number of details were stated to be required. The investigation into the alleged commission of the offence punishable under section 276C(1)(i) of the Act, 1961 by the companies of which the respondent at the relevant time was stated to have been the chief executive officer, would apparently take considerable time, and the respondent was alleged to have committed only a non-cognizable and bailable offence and per se himself could not be attributed to have committed acts detrimental to the economic interest of India especially coupled with the factum that there was no allegation that the respondent was a shareholder of the company. The company had adhered to the directions of a fixed deposit of Rs. 200 crores to be renewed automatically from time to time apart from refund of Rs. 30 crores having not been directed to be released by the Deputy Director could not be overlooked. Undoubtedly taking into account the factum that there was no extradition treaty of our country with China, the respondent fell within the category of a flight risk, but, he was alleged to have committed only a non-cognizable and an alleged bailable offence.

. Though the order of the trial court which had set aside the look-out circular against the respondent was not set aside, in addition to the conditions imposed by the trial court as regards withholding of severance pay and severance package and other incentives and emoluments payable to the respondent the court further directed that the respondent shall further submit an undertaking to the trial court that he shall continue to join the investigation as and when directed by the investigating officer through video conferencing and furthermore, the respondent shall submit an undertaking to the trial court that on commencement of the trial, if any, against him, he shall appear before the trial court as and when directed and in the mode directed by the trial court, that the respondent may be permitted to travel out of India only subject to the respondent submitting a fixed deposit receipt to the tune of Rs. 5 crores drawn on a nationalised Indian bank in the trial court which on deposit was to be renewed in an automatic renewal mode which on the failure of the respondent to join the investigation twice or on failure to appear before the trial court as and when directed by the trial court shall be forfeited. The release of the fixed deposit receipt would be subject to the determination and adjudication of the criminal complaint against the respondent and the respondent shall also adhere to the conditions imposed in the bail order of

the trial court of informing the complainant seven days prior to leaving India.(AY.2020-21) (SJ)

Dy. CIT (Inv) v. Xiongwei Li (2022)448 ITR 193 (Delhi)(HC)

S. 276B : Offences and prosecutions-Failure to pay to the credit tax deducted at source-Company-Principal officer-Discharge affirmed by High Court-On submission by assessees order of discharge set aside and direction for trial to proceed keeping all defences available to accused open. [S. 2(35), 278B]

The trial court discharged both accused on the ground that Sunil V. Raheja was wrongly treated as the principal officer by the Department under section 2(35) of the Act. The High Court confirmed the orders passed by the trial court discharging the accused.
On appeals, In view of the submission of the assesses that they would have no objection if the orders passed by the trial court discharging the accused and confirmed by the High Court were set aside and the trial was ordered to be proceeded further in accordance with law and on the merits and keeping all the defences which may be available to the accused open, the court quashed and set aside the orders passed by the trial court discharging the accused for the offences punishable under section 276B read with section 278B of the Act and confirmed by the High Court and directed the trial to be proceeded with further and the cases decided and disposed of by the trial court in accordance with law and on their own merits. The court clarified that all the defences available to the accused shall be considered by the trial court in accordance with law and on the merits and on the basis of the evidence led.(AY.2017-18)

ITO v. Jenious Clothing Pvt. Ltd. (2022)449 ITR 575/ (2023) 146 taxmann.com 52 (SC)
Editorial : Overuled **ITD v. Jenious Clothing (P) Ltd. (2022) 288 Taxman 521 (Karn)(HC)**

S. 276B : Offences and prosecutions-Failure to pay the tax deducted at source-Application failed to disclose same offences in earlier years-Rejection of compounding application is held to be valid [Art, 226]

The application for compounding of application was rejected by the Commissioner earlier default was not disclosed in the application. The assessee filed writ petition challenging the rejection order. Dismissing the petition the Court held that rejection of application is justified. Court also observed that in the event the assessee succeeds in the SLP petition being SLP (Crl.)No. 1576 / 2019 which is pending before the Supreme Court, the assessee will be entitled to apply for compounding of offences for the Financial years 2013-14, 2014-15 and 2016-17 and said application as and when filed, shall be considered by the Commissioner in accordance with law. (WP No. 6080 /2022, C.M No. 18277/2022 dt 5-9-2-2022))

Visraj Exports Pvt Ltd v. CCIT(TDS) ((2022)The Chamber's Journal-October P.91 (Delhi)(HC)

S. 276B : Offences and prosecutions-Failure to pay to the credit tax deducted at source-Company - Principal Officer - Not managing director-Not in charge of day to day

activities of the company-No error was committed by Trial Court in discharging assessee-Revision petition of Revenue was dismissed.[S. 2(35), Code of Criminal Procedure, 1973.S. 245]

In the notice issued under section 2(35) in complaint that assessee was Managing Director of accused company and was responsible for day-to-day business and conduct of accused company. Assessee filed an application before Trial Court for discharge contending that he was not Managing Director of company and only Director and hence did not fall under section 2(35)(b). Trial Court after considering grounds urged in petition and considering material available on record, allowed application and discharged assessee. On revision, revenue prayed for setting aside order discharging assessee. Dismissing the petition the Court held that notice issued to assessee was not in consonance with section 2(35) as there was no specific averment in notice that assessee was in charge of day-to-day affairs of company-Trial Court took note of notice and came to conclusion that assessee was only asked to show cause why prosecution should not be initiated against him for offence punishable under section 276B, but nothing was contained therein with regard to contents of section 2(35),, therefore, Trial Court committed no error in discharging assessee. (FY. 2016-17) (SJ)

ITD v. Jenious Clothing (P) Ltd. (2022) 288 Taxman 521 (Karn)(HC)
Editorial: SLP of dept allowed ITO v. Jenious Clothing Pvt. Ltd. (2022)449 ITR 575/ (2023) 146 taxmann.com 52 (SC)

S. 276B : Offences and prosecutions-Failure to pay to the credit tax deducted at source-Compounding application-Failure to dispose the compounding application by the Principal Commissioner-Directed the Principal Commissioner to dispose the pending compounding application with in the period of three months from to day and not later than 27 th February 2023.[S. 204,278B,279(2)), Art, 226]

The prosecution was launched against the company and its directors for failure to deposit tax deducted at source as per obligation u/s 204 of the Act. The petitioners have filed an application for compounding which is pending before the appropriate authority since 4 th January, 2020, on which no action was taken till date neither any reasons communicated to the petitioners. In the meantime the Magistrate Court started proceedings and issued bailable warrants. The petitioners filed writ petition against the Revenue for failure to dispose the pending compounding application. Allowing the petition the honourable Court directed the Principal Commissioner to dispose the pending compounding application with in the period of three months from to day and not later than 27 th February 2023. (WP(L) No. 35424 of 2022 dt. 28 th November, 2022)
Hemant Lalwani v.ITO (Bom)(HC) www.itatonline.org

S. 276C : Offences and prosecutions –Evasion of tax-Alteration of charges based on additional witness-Sanction already obtained-New or fresh sanction is not required-Disputed question of fact of non-issuance of notice by Tax Recovery Officer can be confronted in Trial framing additional charge based on additional evidence-Order passed by Special Sessions Judge, in allowing application was affirmed.[S. 276(1),276C(2), 279(1); Code of Criminal Procedure,1973,S.216(5)]

Dismissing the criminal revision petitions the Court held that where initial charge was for offence under section 276(C)(1) for non-payment of tax and charge now sought to be added by way of alteration of charge was for evasion of payment of tax for very same assessment year and, sanction under section 279(1) had already been granted for offence under section 276(C)(1), there was no error in order passed by Special Sessions Judge, in allowing application.(AY. 1983-84 & 1984-85)

G. Victor Devasahayam v. ACIT (2022) 441 ITR 131/ 284 Taxman 531 (Mad.)(HC)

S. 276C : Offences and prosecutions-Wilful attempt to evade tax-Order of CIT(A)) was set aside by the Tribunal-Prosecution launched on alleged failure to comply demand notice will not survive-Criminal petition was allowed.[S. 256, 276((2), 278E]

Assessing Officer in view of order passed by Commissioner (Appeals) determined tax payable by assessee at certain amount and issued demand notice under section 156 As assessee failed to comply demand notice, Deputy Commissioner after obtaining sanction to prosecute lodged a private complaint against assessee under section 276C(2) read with section 278E. Assessee filed petition to quash private complaint on the ground that pending prosecution initiated based on order passed by Commissioner (Appeals), she preferred an appeal against order of Commissioner (Appeals) before Tribunal and Tribunal set aside order of Commissioner (Appeals) and, therefore, very foundation of prosecution against her for alleged wilful default to demand falls to ground and prosecution had to be quashed. Court held that in view of order of Tribunal assessee could not be liable to pay demand based on order passed by Commissioner (Appeals) and criminal prosecution laid based on alleged failure to comply demand notice will not survive. Accordingly petition was allowed.(AY. 2014-15)(SJ)

A. Latha v. Dy. CIT (2022) 288 Taxman 565 (Mad)(HC)

S. 276C : Offences and prosecutions-Wilful attempt to evade tax-Search and seizure-Penalty affirmed by Tribunal-Order of Tribunal set aside by Court-Criminal prosecution quashed [S. 132,271(1)(c),276C(1),276C(2),276CC]

On the basis of the order of the Appellate Tribunal a complaint had been lodged before the competent Magistrate Court which had been taken congizance. On appeal High Court quashed the penalty order. The assessee moved Criminal petition to quash the prosecution proceedings.Allowing the criminal petition, the Court held that since the penalty confirmed by the Tribunal for the assessment year 2005-06 had been set aside by the court, on facts the criminal proceedings pending on the file of the Additional Chief Metropolitan Magistrate against the assessee which was lodged for alleged offences under sections 276CC, 276C(1) and 276C(2) of the Income-tax Act, 1961 were liable to be quashed.(AY.2005-06)

S. M. J. Housing. v. ACIT (2022)448 ITR 165 (Mad)(HC)

S. 276C : Offences and prosecutions-Wilful attempt to evade tax-
-Claim for exemption-Finding by Appellate Tribunal that claim was bona fide-Penalty order was set aside-Prosecution is not valid [S. 54F,271(1)(c)), 277]

The assessee claimed exemption u/s 54F of the Act. The exemption was disllaowed and which was affirmed by the Appellate Tribunal. Penalty was set aside by the Tribunal. Prosecution was launched against the assessee. The petitioner filed application before the High Court to quash the prosecution proceedings, Quashing the proceedings under sections 276C and 277, that the Tribunal had held that the assessee had made a bona fide claim. It was not the case of the Assessing Officer that the claim was false or bogus. When the Appellate Tribunal had factually recorded the finding that there was no suppression of facts and the assessee had originally disclosed the receipt of the sale property, and merely claimed deduction it could not be said that there was wilful evasion of tax. It was also admitted that the tax was paid and penalty proceedings recorded that there was no suppression of fact. The proceedings under sections 276C and 277 were not valid.(AY.2012-13) (SJ)

R. Vasudevan v. Dy. CIT (2022)447 ITR 672 / 289 Taxman 553 (Mad)(HC)

S. 276C : Offences and prosecutions-Wilful attempt to evade tax-Limitation for filing Criminal Complaint-Concealment of income in Foreign Bank-Economic offence-No limitation prescribed-Economic Offences (Inapplicability of Limitation Act) Act, 1974-Evidentiary value of documents-Authenticity of documents would be decided by Trial Court-Powers of High Court-No power to review or alter order once signed-Clarification seeking dispensation with appearance of assessee in Trial Court-Assessee to seek remedy before Trial Court. [S. 131, 148, to quash 250(6) 273A, 276(1)) 277,279(1A), Code of Criminal Procedure, 1973, S, 205, 362, 482 Economic Offences (Inapplicability of Limitation Act) Act, 1974, Indian Evidence Act, 1872, S. 78(6)]

The assessee drew salary from a company. The Central Board of Direct Taxes received certain information that the assessee had created a trust in Europe with his father and brother, made a declaration of endowment in favour of the trust by endowing with a certain sum in Euros and maintained an account with a bank in a foreign State in Europe. From the documents obtained from the German tax authorities under the Double Taxation Avoidance Agreement it was found that a certain sum in Swiss francs including accrued interest was credited to this account. Since the assessee had not declared the bank balance in the foreign bank account either by way of income or deposits or interest from deposits, a notice under section 148 of the Income-tax Act, 1961 was issued to the assessee. During the reassessment proceedings statements of the assessee were recorded under section 131. Though the assessee denied that he had created any trust and had deposited any money in the trust, he volunteered to pay the taxes on the basis of the information, without prejudice to his stand and paid the tax amount including the interest on January 27, 2010. Prosecution was initiated under section 276C(1) and section 277 of the 1961 Act on the sanction of the Commissioner under section 279(1) of the 1961 Act on March 24, 2011 for filing of a complaint. On a petition to quash the proceedings that (a) questioning the limitation in issuing the notice, which was pending adjudication in a tax appeal (b) questioning the documents relied upon by the prosecution on the ground that they were only photo copies which were unauthenticated and (c) contending that since the levy of penalty had been reduced by the Commissioner (Appeals), criminal proceedings against the assessee were liable to be dropped as per section 279(1A) of the 1961 Act and seeking dispensation with personal appearance of the assessee before the trial court since he was a 70 year old senior citizen suffering from ailments. Dismissing the petition, the Court held that, that the tax case appeal before the court was with regard to the legality of the notice issued under section 148 of the 1961 Act

whereas the prosecution over the alleged economic offence had to be tried before the appropriate court of law since there was no direct implication in conducting the criminal case. Moreover, under the Economic Offences (Inapplicability of Limitation) Act, 1974, there was no limitation for launching such type of cases. That the documents relied upon by the Department were obtained from the tax authorities of Germany under the Double Taxation Avoidance Agreement. Their authenticity has been evidenced by the initials appended to the left and right hand side at the bottom of the those documents by the remitter of the information and the recipient of the information. The court could not decide the authenticity of the documents relied upon by the prosecution. It was for the trial court to decide and if it was of the view that the documents relied upon by the prosecution lacked evidentiary value, then it could reject those documents.That section 279(1A) of the 1961 Act would apply only when the penalty imposable or imposed was reduced or waived by an order under section 273A of the 1961 Act. Penalty could be reduced or waived under section 273A of the 1961 Act, provided the assessee had voluntarily and in good faith made full and true disclosure of particulars and co-operated in any enquiry relating to the assessment of his income and had either paid or made satisfactory arrangements for the payment. Admittedly, the assessee had paid the tax amount, without protest and in the meantime, without prejudice to his stand which meant that the assessee could still fight for his case. The Commissioner (Appeals), while reducing the penalty from 300 per cent. to 100 per cent. had observed that the admission of the assessee was not voluntary but a compelled one and had reduced the penalty only because the assessee had accepted and agreed to the addition, without protest. But, that did not brush aside the fact that the assessee had not satisfied the ingredients of section 273A of the 1961 Act, i. e., made disclosures voluntarily and in good faith. The order passed by the Commissioner (Appeals) reducing the penalty was not an order under section 273A of the 1961 Act. Hence, section 279(1A) of the 1961 Act would not apply to the assessee.That the assessee's seeking to dispense with his personal appearance before the trial court was neither a clerical nor an arithmetical error and therefore, the court was barred under section 362 of the Code to consider the request of the assessee after passing the order in the petition. Under section 362 of the Code the court could not alter its judgment once it was signed. The assessee could seek remedy under section 205 of the Code, before the trial court, for dispensing with his appearance. Court observed that Section 362 of the Code of Criminal Procedure, 1973 prohibits the High Court to review or alter its judgment once it is signed. The inherent power under section 482 of the Code is purported to avoid the abuse of the process of the court and to secure ends of justice. Such power cannot be exercised to do something which is expressly barred under the Code.(AY.2002-03)(SJ)

K. M. Mammen v. Dy. CIT (2022)445 ITR 220 (Mad)(HC)

S. 276C : Offences and prosecutions-Wilful attempt to evade tax Power of High Court to try offences committed-Direction to consider application for compounding of offence-Rejection of application for compounding of offence based on circular issued by Central-Contempt petition was dismissed-Directed to consider the application for compounding of offence according to new circular and provisions of section 279(1A of the Act [S. 277 279(IA),Code of Criminal Procedure, 1973, S. 482, Art 215, 226, Contempt Of Courts Act, 1971, S.11, Art, 226]

The assessee was prosecuted under sections 276C and 277 of the Income-tax Act, 1961 for failure to show the investment in the form of bank balance in a foreign bank account. The

assessee filed a criminal petition under section 482 of the Code of Criminal Procedure, 1973 which was dismissed by the single judge. The assessee's special leave petition against this order was pending. The assessee also filed an application for compounding the offence under section 279 of the Act which was rejected by the Director General (Investigation) on the ground that it was not a fit case for compounding according to the circular dated May 16, 2008 issued by the Central Board of Direct Taxes. The assessee filed a writ petition against this order. The single judge set aside the order and remitted the matter to the Committee prescribed under the Central Board of Direct Taxes Guideline No. 7.1 (c) dated May 16, 2008 and granted liberty to place a copy of his order along with a fresh compounding petition under section 279 of the Act and directing the Committee to pass appropriate orders in accordance with law in the light of the observations made in his order. Accordingly the assessee filed a fresh application for compounding the offences before the Committee. The application was rejected based on the Board's circular dated May 16, 2008 under section 279(2). On a contempt petition under section 11 of the Contempt of Courts Act, 1971 read with article 215 of the Constitution of India, dismissing the petition the Court held that (i) that though the single judge had given categorical findings that there was no impediment on the part of the Department to compound the offence under section 279(1A) of the 1961 Act, in the operative portion of the order, he had directed the Director General (Investigation) to pass appropriate orders in accordance with law. Therefore, the assessee had filed a fresh compounding application before the respondents, which was disposed of by the order in question by the respondents. Though the single judge had directed the respondents to pass an order keeping in mind the observations made in the order there was no positive direction in such order. If he had taken a view that application for compounding the offences was to be allowed, he would have quashed the order dated January 15, 2014 and allowed the writ petition. But he had merely observed that just because the order reducing the penalty had been challenged in the tax case appeals, it could not be said that the order reducing the penalty itself had been kept in abeyance, and that in such background, it could only be said that the assessee would be entitled to the benefit of section 279(1A) of the 1961 Act and the mere challenge to the order reducing the penalty would not suffice to deny such a benefit, that in view of these subsequent developments and that there could not be any impediment on the part of the Department to compound the offences under sections 276C and 277. Therefore, there was no merit in the contempt petition. Court also observed that That when the assessee filed the second compounding application on September 9, 2019, the Central Board of Direct Taxes Circular dated June 14, 2019, had already been replaced by circular dated June 14, 2019, wherein the Central Board of Direct Taxes had classified the offence into two categories and offences under sections 275A, 275B and 276 of the 1961 Act would not be compounded. Therefore, according to that circular offences for which the assessee was being prosecuted fell in category B of the circular. When the earlier petition was taken up for hearing and the orders were passed on August 9, 2019, the new guideline was already in force. Though, the new guideline was to apply for fresh applications filed after June 17, 2019, nevertheless the guidelines reflected the policy of the Central Board of Direct Taxes. It would be unfair to discriminate between applicants whose applications were already pending and those applicants whose applications were filed thereafter. The aspect that under section 279(1A) of the 1961 Act a person should not be proceeded against for an offence under sections 276C and 277 in relation to the assessment for an assessment year in respect of which the penalty imposed or imposable on him under clause (iii) of sub-section (1) of section 271 had been reduced or waived by an order under section 273A ought to have been considered. The respondents ought to have considered the factors of reduction of penalty by the Commissioner (Appeals), the assessee's age and his status in society while deciding the case. The fact that the assessee had been subjected to prosecution from 2011 was itself an

adequate punishment. If the assessee had no other cases against him, the respondents should consider the compounding application for compounding the offence in favour of the assessee subject to payment of appropriate compounding fees by him. The application filed by the assessee was to be re-examined by the respondents in the light of the liberalised policy of the Central Board of Direct Taxes in its clarification dated June 14, 2019 since the assessee's application was considered after the new guideline came into force, the provisions of section 279(1A) and other facts. For the same reason, it could not be construed that the respondents had committed contempt of this court since the order did not specify the same.(AY. 2002-03)

K. M. Mammen v.D. C. Patwari,IRS (2022)445 ITR 234 (Mad)(HC)

Editorial: Affirmed by Division Bench, D. C. Patwari,IRS v. K. M. Mammen (2022) 445 ITR 254 / 215 DTR 25/ 327 CTR 158 (Mad)(HC)

S. 276C : Offences and prosecutions-Wilful attempt to evade tax-Rejection of application for compounding of offences-Contempt proceedings-Directions Issued by Court in contempt petition-Court cannot issue directions traversing beyond its scope of jurisdiction-Liberty was granted to the assessee to file a fresh application for compounding of offences and put forth all his contentions.[S. 277, 279, Contempt Of Courts Act, 1971,S. 11, 12, Art, 226]

The assessee filed a contempt petition before the court on the ground that the Director General (Investigation) had wilfully neglected the directions issued by the court in its order dated February 28, 2019. The court dismissed the contempt petition on the ground that there was no merit in the contempt petition by an order dated January 31, 2020 but directed that the application for compounding of offences filed by the assessee was to be re-examined by the Department based on the liberalised policy of the Central Board of Direct Taxes in its clarification dated June 14, 2019, section 279(1A) and other facts mentioned therein. On appeal, allowing the appeal the Court held that having held that there was no merit in the contempt petition the directions issued by the court were beyond its scope of jurisdiction while considering the contempt petition. With regard to the effect and applicability of the circular issued by the Central Board of Direct Taxes dated June 14, 2019, which came into effect from June 17, 2019 admittedly the circular was not in vogue when the assessee filed his first application under section 279(2). The court while testing the correctness of the order dated January 15, 2014 had examined the correctness of the circular or guidelines which were in vogue when the order was passed which was the circular dated May 16, 2008. The court had in the order in question stated that neither the respondent nor the Department had brought to the notice of the court about the fresh circular dated June 14, 2019, when the writ petition was heard in August, 2019 (filed in 2014). The effective date of the circular referred to by the court was June 17, 2019 and these issues neither directly nor indirectly arose for consideration in the contempt petition and there were no pleadings to that effect. Consequently the Department had no opportunity to put forth its submissions. Therefore, the directions were set aside. Liberty was granted to the assessee to file a fresh application for compounding of offences and put forth all his contentions.(AY.2002-03)

D. C. Patwari v.K. M. Mammen (2022)445 ITR 254 (Mad)(HC)

Editorial: Decision of the single judge in K. M. Mammen v. D. C. Patwari (2022) 445 ITR 234 (Mad)(HC) affirmed.

S. 276C : Offences and prosecutions-Wilful attempt to evade tax-Presumption of culpable mental state-Delay in paying self assessment tax-Tax and interest paid before filing of complaint-Launching of prosecution malicious and in valid [S. 140A, 276(2), 278E]

There was a failure on the part of the assessee to pay the tax in time, which was later on paid after 4½ months along with interest payable. The Income tax department filed complaint for prosecution alleging that the petitioners have wilfully attempted to evade payment of income-tax for the assessment year 2017-18. The accused moved petition before the High court to quash the proceedings. Allowing the petition the Court held that except a delay of 4½ months in payment of tax, there was no tax evasion or attempt to evade the payment of tax. To invoke the deeming provision, there should be a default in payment of tax in true sense. The Principal Commissioner who had accorded sanction on March 14, 2019 had not considered the payment of tax with interest by the assessee on February 15, 2018. Further the Principal Commissioner had conspicuously omitted to record the fact of payment of tax with interest except to record that the tax was not paid within time. Thus, the suppression of material facts, intentional suggestion of falsehood and non-application of mind went to show that this was a malicious prosecution initiated by the Income-tax authorities by abusing the power. When the mala fides were patently manifested, the assessees need not be forced to undergo the ordeal of trial. The complaint was quashed.(AY.2017-18)

Noorjahan (Mrs) v. Dy. CIT (2022) 445 ITR 17/ 215 DTR 209/ 327 CTR 768 287 Taxman 422 (Mad)(HC)

AMK Solutions Private Ltd. v. Dy. CIT (2022) 445 ITR 17 / 215 DTR 209/ 327 CTR 768 287 Taxman 422(Mad)(HC)

S. 276C : Offences and prosecutions-Wilful attempt to evade tax-Mens rea must be proved-Penalty Levied and paid for furnishing incorrect particulars in Income-Tax Return-Prosecution was not valid. [S. 132(4)(a), 277]

Petition was filed to quash the proceedings pending before the Additional Chief Metropolitan Magistrate. Allowing the petition the Court held that it could be seen that there was no act of concealment on the part of the assessee. The gravamen of indictment related to filing of an incorrect return and making wrong verification of the statements filed in support of the return, resulting in initiation of penalty proceedings. On the facts of the caseit was only wrong calculation of the loss sustained in his business, which was not supported by the books of account or other documents. The assessee had paid the penalty as early as on April 23, 2014. Three years thereafter, show-cause notices were issued to the assessee. In these cases, entire payments were made by the assessee and there was no intention to evade payment. The prosecution under sections 276C and 277 was not valid. Referred Prem Dass v.ITO(1999) 236 ITR 683(SC), wherein the Court held that mere omission and negligence, cannot be construed as offence.(AY. 2007-08, 2008-09)(SJ)

K. E. Gnanavel Raja v. ACIT (2022) 444 ITR 562 /287 Taxman 127 (Mad) (HC)

S. 276C : Offences and prosecutions-Wilful attempt to evade tax-Failure to file return of income-Payment of tax with interest-No wilful evasion of tax-Prosecution quashed.[S. 140A, 276C(2)), 276CC]

A complaint was filed against the assessee for filing defective return and for non-payment of self assessment tax under section 140A before furnishing the return of income. The assessee filed petition before the High Court for quashing of the proceedings on the ground that the entire dues were paid with interest and furnished the details of payments. Allowing the petition the Court held that the offences alleged were only technical offences and there was no material to show that there was any deliberate and conscious evasion of tax on the part of the assessee. It had paid the entire amount of tax with interest and this was confirmed by the Deputy Commissioner. Therefore, the criminal proceedings were quashed. Relied Prem Das v. iTO (1999) 236 ITR 683 (SC).(AY. 2014-15)

Inland Builders Pvt. Ltd. v. Dy. CIT (2022)443 ITR 270 (Mad) (HC)

S. 276C : Offences and prosecutions-Wilful attempt to evade tax-Self assessment-Default in payment of tax on time-Paying tax in instalments-No mala fide intention to evade tax.[S. 140A(3) 226, 276(2)]

On a revision petition allowing the petition the Court held that on the facts and the nature of the complaint there was no intention or wilful attempt made by the assessee to evade the payment of tax. Though the Explanation to section 276C is an inclusive one it was not the case of the Department that the assessee had made any false entry in the statements or documents or omitted to make any such entry in the books of account or other document or acted in any other manner to avoid payment of tax. From the inception there was no suppression and even in the reply to the notice the assessee had clearly stated the circumstances which had forced him to such default. If the intention of the assessee to evade the payment of tax was present from the very inception, he would not have made further payments. The statements filed by the Department also indicated that he had continuously paid the taxes in instalments. The assessee's conduct itself showed that there was no wilful attempt to evade the payment of tax. The payment of tax in instalments probabilised his reply given to the notice but had not been considered by the Department. The criminal proceedings were quashed. (SJ) (AY.2013-14)

S. P. Velayutham v. ACIT (2022)442 ITR 74/ 215 DTR 265/ 327 CTR 779 (Mad) (HC)

S. 276C : Offences and prosecutions-Wilful attempt to evade tax-Survey-Capital gains-Penalty deleted-Prosecution quashed. [S. 45, 54B, 54F, 148, 271(1)(c), 277]

.The Assessing Officer held that but for the survey, the incorrect claims to exemption under sections 54, 54B and 54F would have been allowed unnoticed, that the claims were mala fide with intention to evade tax, that the assessees had concealed income by furnishing inaccurate particulars of income. He levied penalty under section 271(1)(c) which was confirmed by the Commissioner (Appeals). The Tribunal deleted the penalty. Consequent to the order of Commissioner (Appeals) the Assessing Officer launched prosecution under sections 276C and 277 for wilful attempt to evade tax or penalty. The assessee moved petition before the High court to quash the prosecution proceedings, allowing the petitions the Court held that on the facts there was no suppression of facts and the assessee had originally disclosed the receipt of monies from the sale of property and mere claiming of

deduction there was no wilful evasion of tax. The disclosure had been made. Therefore, the fact that merely exemptions from capital gains were claimed under section 54 or section 54B or section 54F on the property and investments had not been made, wilful evasion of tax could not be presumed. The Tribunal had found that there was no suppression of facts. Therefore, initiation of prosecution on similar allegations was nothing but a futile exercise. The criminal prosecution on similar grounds would not serve any purpose but only lead to unnecessary harassment. Accordingly, the criminal proceedings initiated were quashed.(AY.2010-11)

H. Ameerdeen v. ITO (2022)441 ITR 604/ 210 DTR 201/ 326 CTR 554 / 286 Taxman 313 (Mad) (HC)

S. 276C : Offences and prosecutions-Wilful attempt to evade tax-Survey-Capital gains-Penalty deleted-Prosecution quashed. [S. 45, 54B, 54F, 148, 271(1)(c), 277]

.The Assessing Officer held that but for the survey, the incorrect claims to exemption under sections 54, 54B and 54F would have been allowed unnoticed, that the claims were mala fide with intention to evade tax, that the assessee had concealed income by furnishing inaccurate particulars of income. He levied penalty under section 271(1)(c) which was confirmed by the Commissioner (Appeals). The Tribunal deleted the penalty. Consequent to the order of Commissioner (Appeals) the Assessing Officer launched prosecution under sections 276C and 277 for wilful attempt to evade tax or penalty. The assessee moved petition before the High court to quash the prosecution proceedings, allowing the petitions the Court held that on the facts there was no suppression of facts and the assessee had originally disclosed the receipt of monies from the sale of property and mere claiming of deduction there was no wilful evasion of tax. The disclosure had been made. Therefore, the fact that merely exemptions from capital gains were claimed under section 54 or section 54B or section 54F on the property and investments had not been made, wilful evasion of tax could not be presumed. The Tribunal had found that there was no suppression of facts. Therefore, initiation of prosecution on similar allegations was nothing but a futile exercise. The criminal prosecution on similar grounds would not serve any purpose but only lead to unnecessary harassment. Accordingly, the criminal proceedings initiated were quashed.(AY.2010-11)

H. Ameerdeen v. ITO (2022)441 ITR 604/ 210 DTR 201/ 326 CTR 554 / 286 Taxman 313 (Mad) (HC)

S. 276CC : Offences and prosecutions-Failure to furnish return of income –Levy of penalty-Tribunal set aside the penalty order-Prosecution is not justified [S. 271 (1)(c), 271F,276C]

The Revision Petition was filed challenging the order passed by the Special Court (Economic Offences) taking cognizance of the offence punishable u/s. 276CC of the Income Tax Act, 1961. There is a delay in filing the return of income. The sufficient explanation is offered, however, the said explanation was not accepted by the AO and a penalty of Rs.5,000/-was imposed. The Tribunal by its order has set aside the penalty imposed by the authorities. The Income Tax department did not pursue the matter further against the order passed, when the adverse finding has not been challenged by the department, further prosecution on the very same set of facts would not be permissible.(AY. 2012-13)

Metricstream Infotech (India) Pvt. Ltd. v. ITO (2022) 326 CTR 684 / 214 DTR 411 (Karn)(HC)

S. 276CC : Offences and prosecutions-Failure to furnish return of income-Return was filed within extended time-Refund was granted-Criminal miscellaneous was quashed.[S. 139(1), 139(4)]

Assessee filed return within extended time as provided in section 139(4) and in return there was a refund due to him which was refunded. Revenue filed complaint against assessee for offence punishable under section 276CC stating that assessee failed to submit return within time limit prescribed under section 139(1).The assessee filed petition to quash the proceedings. Allowing the petition the Court held that there was no evasion of tax and return had been filed and refund had also been ordered, there was no wilful failure on part of assessee to file return and offence under section 276CC of the Act was not attracted. Accordingly the complaint filed against assessee was quashed.(AY. 2014-15) (SJ)
Arvind Nandagopal v. ACIT (2022) 289 Taxman 679 (Mad)(HC)

S. 276CC : Offences and prosecutions-Failure to furnish return of income-Search-Delay of 72 days in filing of return-Failure to provide copies of statements –No evasion of tax-Lunching of prosecution was quashed [S. 132, 153A, 279]

Search was conducted at business and residential premises of assessee, notice under section 153A was issued to assessee, requiring him to file income-tax return. On receipt of notice, assessee requested Assessing Officer to provide copies of statements recorded during course of search. Commissioner issued show cause notice under section 279(1) for launching prosecution under section 276CC against assessee for failure to file return in time. In response, assessee submitted that he had already furnished his return for relevant assessment year and it was only pursuant to search that he was asked to furnished revised return. He, further claimed that there was delay of 72 days in filing of return as requisite documents were not supplied to him despite being demanded. The Commissioner gave sanction to launch the prosecution and the Trail court initiated the prosecution. The assessee filed petition to quash the proceedings, allowing the petition the Court held that since revenue had only desired assessee's prosecution for delay of 72 days in filing of return and there was not even whisper of evasion of income-tax, cognizance taken by Trial Court for offence of evasion of tax under section 276CC was ex facie erroneous and prosecution was quashed (AY. 2013-14)

Ashish Agarwal v. ITD (2022) 289 Taxman 518 (Raj)(HC)

S. 276CC : Offences and prosecutions-Failure to furnish return of income-Compounding of offence not an absolute right but to be allowed based on facts and circumstances-Absence of assessee in India or communication gap between assessee and her representative not ground to quash prosecution [S.131(IA), 139(1), 276C(1), 278E, Code of Criminal Procedure, 1973, 200, 482]
The assessee failed to file her returns of income under section 139(1) within prescribed time for the assessment years 2010-11 to 2015-16. In the course of enquiry made under section 131(1A), the assessee's chartered accountant who represented the assessee admitted

the failure to file returns of income. Show-cause notices under section 276CC and section 276C(1) were issued for each assessment year for initiation of proceedings. The Department compounded the offences and prosecution under section 276CC only for the assessment years 2010-11 and 2011-12. On petitions seeking quashing of the complaints, dismissing the petitions the Court held that there was enough material to proceed against the assessee for non-filing of returns of income under section 139(1) within the prescribed time which was punishable under section 276CC and for filing the return belatedly with suppressed income which was punishable under section 276C(1). Until the show-cause notices were issued to the assessee, she had not filed returns for her individual income and on investigation omission of certain income was found in her belated returns. Particularly, the source for payment through credit cards and interest accumulated in fixed deposits were detected and therefore, the prosecution had been launched. The self assessment tax on declared income was paid only after initiation of enquiry proceedings that too concealing a substantial part of the income. In such circumstances, several lakhs of rupees had been evaded with wilful intention. The Department had caused notice to the assessee and the explanation given by the assessee's representative was not satisfactory leading to launching of the prosecution. The absence of the assessee in India or the communication gap between herself and her representative could not be a ground to quash the prosecution. The petition was dismissed.(AY.2010-11 to 2015-16)(SJ)

Anjuga Selvi Alagiri (Smt.) v. Dy. DIT (Inv) (2022)448 ITR 169 / 289 Taxman 326 (Mad)(HC)

S. 276CC : Offences and prosecutions-Failure to furnish return of income-Survey-Delay of several months-Launching of complaint is justified-Petition to quash the proceedings dismissed [S. 133A, 139, 148, 271(1))(c), 276(1), 277,]

During survey conducted at business premises of petitioner, it was noted that petitioner had concealed income for relevant six assessment years. Consequently, reopening notice was issued and petitioner filed his return of income. Thereafter, tax payable was determined and penalty was levied under section 271(1)(c). Revenue filed complaints on grounds that petitioner committed offences punishable under sections 276CC, 276C(1) and 277 the Act. The petitioner filed petition to quash the prosecution proceedings and contended that assessment order was passed after accepting returns filed by him and amount due was also paid thus, there could be no prosecution on ground of making false statements. The court observed that substantial amount of income which was suppressed by petitioner came into light only after survey. Return of income was filed by petitioner in response to reopening notice with a delay of several months.. Petitioner was involved in wilful and deliberate concealment of true and correct income by not filing return within stipulated time and complaint filed by revenue was justified. (AY. 1999-2000 to 2004-05) (SJ)

Dharampal R. Pandia v. ACIT (2022) 288 Taxman 177 (Mad) (HC)

S. 276CC : Offences and prosecutions-Failure to furnish return of income-Tribunal quashing the order on ground of limitation-Criminal prosecution initiated against petitioner for committing offences under sections 276CC and 276 could not be quashed [S. 139,148, 153A, 276C, 278E]

Petitioner failed in complying with statutory requirements under sections 139(1), 148 and 153A for relevant assessment years. Petitioner was issued show cause notice for prosecution under section 276CC for concealing his true income by not filing return and on failure to pay advance tax. Consequently, a complaint was filed stating that petitioner committed offences

under sections 276CC and 276. Petitioner made an application for quashing the complaint on ground that Tribunal declared assessment orders as null and void and, thus, prosecution of criminal cases would not be sustainable. Court held that adjudicating proceedings would not be binding on proceedings for criminal prosecution and both proceedings could be launched simultaneously.Where Tribunal in adjudicating proceedings disposed appeals merely on ground of limitations and merits raised in complaint with regard to non-filing of return of income, non-payment of advance tax, non-payment of tax demanded, suppression of true and correct income were not considered, criminal prosecution initiated against petitioner could not be quashed. (AY. 2002-03 to 2006-07)(SJ)

S.J. Surya v. Dy. CIT (2022) 288 Taxman 621 / 214 DTR 361 (Mad)(HC)

S. 276CC : Offences and prosecutions-Failure to furnish return of income-Trail Court in 81 cases took cognizance of tax evasion due to failure to file return-High Court quashed the Trail Court order and directed to pass a speaking order.[S. 153A, 279, Code of Criminal Procedure S 397, 482]

There was delay of 72 days in filing of return. The Revenue launched the prosecution. Trial court had taken cognizance of offence u/s 276 CC on a prima facie finding that a case was made against the assessee. The assessee moved High Court to quash and stay of the proceedings. High Court quashed the Trail Court order and directed to pass a speaking order. The Court also observed that the assesse's shall be free to challenge order granting prosecution sanction in accordance with law, if so advised. (S.B.C Misc /Pet) No. 3106 /2022 dt 4-8-2022)

Ashish Agarwal v. Income-tax department (2022) 143 taxmann.com 322 (Raj)(HC)

S. 276CC : Offences and prosecutions-Failure to furnish return of income-Delay of 10 days-Department cannot launch prosecution in the absence of sanction u/s 278B of the Act-Prosecution was quashed [S. 2(20) 2(35)(b), 278B, 278E, 279]

The assessee has filed revision petition before the Magistrate contending that there was no loss caused to the Government Exchequer because the return had been filed with a delay of mere ten days, the sanction was defective as it did not disclose the role of the director, and that no offence was made out against the director as he was not responsible for the conduct of the business of the company. The Magistrate dismissed the revision petition. Against the dismissal order petition was filed before the High Court. The Court held that the sanction which was placed on the record refers to the Company M/s ASM Trim Pvt Ltd as the assessee. There was no sanction qua the petitioner, even as a "person" being a director / being responsible for the conduct of the business of the company. Since the law provides that without sanction u/s 278B of the Act the Department cannot proceed against a person found liable to prosecute him for the offence under section 276CC of the Act. Accordingly the complaint and all proceedings emanating therefrom including the orders qua the petitioner

was quashed and the petition was allowed. (CRL.M.C. 3894 / 2018 CRL.M.A. 29254 /2018 dt. 19-7 2022) (AY. 2012-13)

Vipul Aggarwal v.ITO (2022) 217 DTR 306/ 328 CTR 550/ 289 Taxman 474/(2023) 450 ITR 254 (Delhi)(HC)

S. 276CC : Offences and prosecutions-Failure to furnish return of income-Assessee must be given opportunity to compound offence.[S. 139, 279, Art, 226]

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Writ petition was filed challenge to the complaint filed by the Department.Allowing the petition the Court held, that before launching criminal prosecution against the assessees if one more opportunity were granted and compounding were permitted no prejudice would be caused to the Revenue.The assessees were directed to submit applications for compounding the offence under section 276CC within six weeks of receipt of the copy of the order of the court. (SJ)

Nasiruddin v. ITO (2022) 444 ITR 318 (Karn) (HC)

Fatima v. ITO (2022) 444 ITR 318 (Karn) (HC)

Raheesahmed v. ITO (2022) 444 ITR 318 (Karn) (HC)

S. 276CC : Offences and prosecutions-Failure to furnish return of income-Two PAN Nunbers-Surrenderred second PAN number-Filed return regularly in one PAN number-Launching of prosecution is not valid [S. 139(1)]

Assessee had two PAN numbers and it had filed its return of income in respect of one of those Pan numbers without any default.Assessing Officer held that the assessee had not filed his return of income in respect of said second PAN card and, accordingly, initiated prosecution under section 276CC against assessee. The Assessee moved petition before High Court to quash the proceedings. High Court held that merely because there were two PAN numbers allotted to assessee, he could not be prosecuted on ground that assessee had not filed return concerning second PAN number. Proceedings pending on the file of Additional Chief MetropolitanMagistrate, Economic Offences is quashed. (AY. 2013-14) (SJ)

Sudhir Kumar Hasija. v. ACIT (2022) 285 Taxman 482 / 215 DTR 174 / 329 CTR 735 (Mad) (HC)

S. 279 : Offences and prosecutions-Sanction-Chief Commissioner-Commissioner-Application for compounding of offence-Rejected on the ground of limitation and the fact that assessee was already convicted by Magistrate-Conviction order set aside by CBI Judge and directed a fresh trial-High Court sets aside rejection of compounding

application as (i) CBDT Circular had relaxed time limit to file a such application and (ii) second objection no longer survives as the conviction set aside-Revenue to consider the application seeking compounding on its own merit and in accordance with law [S. 119, 276CC, 278E, Art, 226, CRPC, 391]

The Revenue rejected the prayer of the assessee for compounding the offences under s. 276CC r/w s. 278E of the Act on the ground that (i) the application seeking compounding of the offences was not filed within the stipulated time and (ii) the assessee already stood convicted by the Addl. Chief Metropolitan Magistrate ('ACMM'). The assessee filed an appeal against the conviction order, wherein an application under s. 391 of the CrPC was also filed. The assessee also filed a review application. The Special Judge, CBI, set aside the conviction and order of sentence and directed the ACMM to consider the fresh documents filed by the assessee and pass a fresh order in the trial. Review application rejection on the ground that the assessee was not acquitted of the criminal charges. Aggrieved, the assessee approached the Delhi High Court.

The High Court set aside the rejection of the compounding application and review application on the ground that (i) in view of the CBDT Circular dated 9th September 2019 [(2019) 181 DTR (St) 141 : (2019) 310 CTR (St) 155], the objection on limitation did not survive any further as the said circular grants one-time concession relaxing the period of 12 months from the filing of the complaint as a limitation for filing of the applications seeking compounding and (ii) as far as the objection of conviction of the assessee was concerned, in view of the order passed by the CBI Judge, it also no longer survived as the conviction has been set aside. Moreover, the Revenue was also directed to consider the application of the petitioner seeking compounding of the offence under section 276CC r/w section 278E on merit and in accordance with the law.(AY. 2008-09)

Jai Singh Goel v. CCIT. (2022) 325 CTR 485 / 211 DTR 293 (Delhi)(HC)

S. 279 : Offences and prosecutions-Sanction-Chief Commissioner-Commissioner-Failure to deposit tax deducted at source-Deposited in Government Treasury after 11 months-Assessee and persons in charge to face trial-Writ petition to quash the proceedings was dismissed-Petition for Special Leave to appeal dismissed.[S. 192, Art, 136, 226].

The assessee deducted tax at source, but was not deposited in the Government treasury within the prescribed statutory time. These defaults were in respect of salary and other income. The Commissioner (TDS) passed the order of sanction for prosecution issued under section 279(1) of the Income-tax Act, 1961. On a writ petition the High Court held that questions and issues relating to grant and issue of sanction could be raised and decided during the trial and dismissed the petition. On a petition for special leave to appeal, dismissing the petition the Court held that though a huge amount of Rs.3,52,99,059 was deducted by the assessee-company as tax at source, it was not deposited in the Government treasury within the prescribed statutory time but after 11 months. Therefore, once there was a non-deposit, the necessary consequences shall follow including the prosecution. The submissions made on behalf of the assessee were all defences which were required to be considered by the trial court in the trial. By the time the assessee approached the High Court to set aside the sanction order under article 226 of the Constitution of India the magistrate had already taken cognizance and issued summons to the assessee. Therefore, the High Court was justified in observing that the assessee and the persons in charge were required to face the trial. No interference was called for by the court in exercise of powers under article 136 of the

Constitution of India.(AY.2013-14))

Indo Arya Central Transport Ltd. v. CIT (TDS) (2022)443 ITR 239/ 211 DTR 441 / 325 CTR 553 / 285 Taman 2 (SC)
Editorial : Decision in Indo Arya Central Transport Ltd. v. CIT (TDS) (2018) 404 ITR 667 (Delhi)(HC) affirmed.

S. 279 : Offences and prosecutions-Sanction-Chief Commissioner-Commissioner-Compounding of offence-Past conviction for default in depositing of TDS were not disclosed-Order of conviction was under challenge before Supreme Court and stayed-Order of rejection was held to be valid-Until pending conviction orders with respect to earlier years were set aside. [S. 276B, 278B, Art, 226]

Prosecution was initiated against assessee under sections 276B and 278B due to default in deposit of TDS. On receipt of notice of prosecution the assessee filed an application to Commissioner for compounding of offences.Commissioner rejected said application on ground that assessee had been convicted for same offences for assessment years 2010-11, 2011-12 and 2012-13 and said fact was suppressed in application. He held that application was not maintainable in light of Para 8.1(iii) of CBDT Compounding Guidelines, 2019. Assessee claimed that order of conviction related to earlier years was under challenge in SLP wherein Supreme Court had stayed operation of order of conviction and he could not be considered a 'convict' during pendency of aforesaid proceedings. On writ the Court held that prior order of conviction is a relevant fact and could not be said to be inconsequential and, thus, assessee should have duly disclosed existence of conviction order and proceedings pending before SLP while furnishing information in instant compounding application. Since assessee was a repeat defaulter and had been successfully convicted by Criminal Court in complaints filed against him, in such circumstances until pending conviction orders with respect to earlier years were set aside, there was no infirmity in order of Commissioner in light of Para 8.1(iii) of CBDT guidelines, 2019. (AY. 2014-15, 2015-16 and 2017-18)
Viraj Exports (P.) Ltd. v. CCIT (TDS) (2022) 289 Taxman 430 (Delhi)(HC)

S. 279 : Offences and prosecutions-Sanction-Chief Commissioner-Commissioner-Wilful attempt to evade tax-Application for compounding of offences-Limitation-Show-cause notice issued for rejection of compounding of offences on ground of Bar of limitation relying on Circular issued by Central Board of Direct Taxes-Circular cannot override statutory provision-Authority to consider application in accordance with law.[S. 276C, 277, 278B,279(2) Art, 226]
A criminal case was filed against the assessee under section 276C(1) read with sections 277 and 278B on the ground of wilful attempt to evade tax relating to the AY 1990-91. The assessee filed an application for compounding of the offences before the Chief Commissioner who issued a show-cause notice for rejecting the application relying upon the Board's Circular F. No. 285/08/2014-IT (Inv.V)/147 dated June 14, 2019. On a writ petition allowing the petition, that on the facts and circumstances and the provisions of sub-section (2) of section 279 the compounding application of the assessee could not be rejected by the Income-tax authority concerned on the ground of delay in filing the application. It was not disputed by the respondents in the court or in the show-cause notice that the criminal case in

question was still pending. The Income-tax authority was to consider the compounding application of the assessee in accordance with law.(AY. 1990-91)

G. P. Engineering Works Kachhwa v.UOI (2022)446 ITR 563 (All) (HC)

S. 279 : Offences and prosecutions-Sanction-Chief Commissioner-Commissioner-Compounding of offences-CBDT Circular issued in 2019-Assessee over 70 years-Discretion to compound offences-Paid tax, penalty and interest-Directed to consider the application for compounding the offence.[S. 119(1), 271(1)(c), 273A, 276C, 277, 279(2) Art, 226]

The assessee was being prosecuted under section 279 of the Act, for offences punishable under sections 276C or 277 of the Act. The petitioner moved application for compounding of offences which was rejected. On writ petitioner contended that he is now over 70 years and had been facing prosecution for over a period of a decade for an offence allegedly committed by him during 2001-02 for the assessment year 2002-03. Earlier, the assessee faced adjudication proceedings both under section 148 and penalty proceedings under section 279(2) of the Act. The assessee had paid the tax, interest and the penalty imposed on him. Court held that the legislative intent of section 279(1A) of the Act had to be kept in mind where there was a reduction of penalty. The Court held that this is a fit case for compounding the offence considering the age of the petitioner and considering the fact that the petitioner has paid the tax, interest and penalty. The order refusing to compound the offences was not justified. Order was set aside and directed respondents compound the case subject to the petitioner paying the compounding fees as determined by the respondents (AY.2002-03) (SJ)

K. M. Mammen v. CIT (2022)445 ITR 266 / 215 DTR 37 / 139 taxmann.com 57 / 327 CTR 170 (Mad)(HC)

S. 281 : Certain transfers to be void-Priority of debt-Mortgage executed prior to initiation of action by department-Matter to be investigated by Tax Recover Officer.[S. 226, Rule, 11, Schedule II Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, Recovery of Debts and Bankruptcy Act, 1993]

The petitioner-bank had granted credit facilities to the assessee against mortgage of immovable properties. The equitable mortgages so created were confirmed by execution of separate memorandums relating to deposit of title deeds and these were also registered on the file of the Sub-Registrar, confirming the equitable mortgage. Pursuant to an auction of the mortgaged property by the bank the Sub-Registrar declined to register the sale certificate issued under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 on the grounds that the property in question was attached by the Tax Recovery Officer under section 226 of the 1961 Act towards arrears of tax dues and such attachment was recorded in the books of the Sub-Registrar. On a writ petition by the bank contending that it held prior charge as a valid mortgage was executed in favour of the bank and under the provisions of the Recovery of Debts and Bankruptcy Act, 1993 and the 2002 Act, the bank held the priority and therefore, the Income-tax Department had no authority to pass an attachment order affecting the rights of the bank in respect of the property under mortgage. On writ the Court held that the bank was to approach the Tax Recovery Officer by

filing an application under rule 11 of Schedule II to the 1961 Act for adjudication of the facts, so as to form an opinion whether or not the bank was entitled to enforce its rights. If such an application was filed, the Tax Recovery Officer was to investigate it with reference to the original documents and evidence and pass appropriate orders.

State Bank of India v. TRO (2022)441 ITR 516 (Mad) (HC)

S. 281B : Provisional attachment-Power must not be exercised in an arbitrary manner-Recovery proceedings against assignee of Partner's Share in firm-Provisional Attachment Of Property Of Firm is not valid-Interpretation of taxing statute-The golden rule of interpretation of statutes is that the statute has to be construed according to its plain, literal and grammatical meaning,unless it leads to absurdity. [Indian Partnership Act, 1932, S. 29]

In proceedings against an individual AS, to whom one of the partners of the assessee-firm had assigned part of her interest in the firm, property standing in the name of the assessee-firm was provisionally attached on the ground that AS had paid cash consideration to the partner and thereby, derived 2.5 per cent. share in the profit from the partner. On a writ petition to quash the order of provisional attachment the Court held that the case on hand indisputably was not one of a sub-partnership though in view of section 29(1) of the Partnership Act, as an assignee may become entitled to receive the assigned share in the profits from the firm, not as a sub-partner because no sub-partnership came into existence, but as an assignee to the share of profit of the assignor-partner. The subject land not being the property of AS, was not open to provisional attachment. Even if the Department's case that there was some interest of AS involved in the land in question, that would not make the subject land of the ownership of AS. The provisional attachment of the subject land under section 281B of the Act at the instance of the Revenue was not sustainable in law. A fine distinction was drawn by the Supreme Court in the case of Sunil J. Kinariwala (2003) 259 ITR 10 (SC) between a case where a partner of a firm assigns his or her share in favour of a third person and a case where a partner constitutes a sub-partnership with his or her share in the main partnership. Whereas in the former case, in view of section 29(1) of the Partnership Act, the assignee gets no right or interest in the main partnership except to receive that part of the profits of the firm referable to the assignment and to the assets in the event of dissolution of the firm, in the latter case, the sub-partnership acquires a special interest in the main partnership.The golden rule of interpretation of statutes is that the statute has to be construed according to its plain, literal and grammatical meaning,unless it leads to absurdity.(AY.2014-15 to 2019-20)

Raghunandan Enterprise v. ACIT (2022)442 ITR 460 / 211 DTR 345/ 328 CTR 99 (Guj) (HC)

S. 281B : Provisional attachment-Merely stating likelihood of huge liability-Attaching fixed deposit-Order cryptic, unreasoned, non-speaking and laconic-Order was quashed [S. 153A, Art, 226]

Allowing the petition the Court held that attaching the fixed deposit on merely stating likelihood of huge liability with the apprehension that the assessee might not make payment thereof thus causing loss to the Revenue, was clearly unfounded and without any basis. The order is cryptic, unreasoned, non-speaking and laconic. Order was quashed.

Indian Minerals and Granite Co. v. Dy. CIT (2022) 440 ITR 292 (Karn) (HC)

S.292CC:: Authorisation and assessment in case of search or requisition-Separately in the name of each person-Validity-Search was conducted after introduction of section 292CC and not by applying provision retrospectively-Amendment is clarificatory in nature-Challenge to constitutional validity of section 292CC was rejected.[S. 132,132A, Art, 226]

Petitioner challenged constitutional validity of section 292CC brought by Finance Act of 2012 giving retrospective effect It was found that retrospectivity of said provision has no effect on case on hand, because search in case of assessee was conducted much after amendment and not by applying provision retrospectively.Further, it was otherwise clarificatory in nature therefore, challenge to constitutional validity of section 292CC was rejected.(AY. 2014-15 to 2017-18)

SRS Mining v. UOI (2022) 328 CTR 510/ 217 DTR 321 / 141 taxmann.com 272 (Mad)(HC)

Black Money (Undisclosed Foreign Income & Assets) and Imposition of Tax Act, 2015.

S. 10:Assessment-Notice issued based on information received from IT authorities-Order passed under IT Act based on same information was earlier set-aside by the Tribunal on the ground of non-application of mind-Notice issued under BMA was quashed. [S. 132 153A, Art, 226]

AO conducted search u/s 132 of Income Tax Act on the Assessee and made certain additions in an orders passed u/s 153A for AY 2009-10 to AY 2015-16 on the alleged ground that Assessee is beneficial owner of a foreign company. On appeal, the Tribunal set-aside the orders passed u/s 153A on the ground that the AO has failed to discharge the burden to prove with evidence that the Assessee was the beneficial owner of the foreign company.

Subsequently, the AO passed on the same information to the BMA authorities. The BMA authorities based on such information issued notice u/s 10 of BMA. The Assessee challenged the notice u/s 10 of BMA in writ petition before the Karnataka High Court.

The High Court held that the basis for order u/s 153A of the IT Act and notice u/s 10 of BMA were the same. and that that the Tribunal in appeals against orders u/s 153A held that the AO had failed to apply his mind and discharge his onus. Accordingly, the High Court held that there was non-application of mind at both stages i.e. under the IT Act as well as under the BMA. It also observed that the BMA authorities have acted mechanically on receipt of information from the IT authorities The notice issued u/s 10 of the BMA was quashed, with a liberty to the BMA authorities to issue fresh notice in accordance with law.

Jitendra Virwani v. JCIT (2022) 220 DTR 433 /(2023) 330 CTR 34 (Karn)(HC)

S.10: Assessment-Denial of liability-Foreign assets claimed to be acquired out of income not taxable in India-Income not taxable in India-Alternative remedy-Writ is not maintainable-Directed to pursue alternative remedy of appeal.[S.14, 15, Art, 226]

assessees denied their liability to be assessed under BMI Act, 2015 with reference to foreign assets on ground that said assets were acquired by them out of income not taxable in India.

On writ dismissing the petition the Court held that since sections 14 and 15 of BMI Act, 2015 clearly stipulate that any person denying his liability to be assessed under Act of 2015 or objecting to any penalty imposed by Assessing Officer may appeal to Commissioner (Appeals) and complete machinery is provided for person aggrieved of any action taken by Assessing Officer, assessees could not be permitted to abandon that machinery and to invoke jurisdiction of High Court under article 226 of Constitution when adequate remedy was open to him. Court also held that the appellate authority shall consider the appeal only on merits without making any reference to the period of limitation and, till then, no punitive action shall be taken against the Petitioners. Applied Genpact India (P.) Ltd. v. Dy. CIT [2020] 268 Taxman 299/[2019] 111 taxmann.com 402/419 ITR 440 (SC) and CIT v. Chhabil Dass Agarwal [2013] 36 taxmann.com 36/217 Taxman 143/357 ITR 357 (SC)/[2014] 1 SCC 603.

Tabasum Mir v. UOI (2022) 218 DTR 1/328 CTR 737 / 142 taxmann.com 343 (J & K (HC)
Abdul Rashid Mir v. UOI (2022) 218 DTR 1 / 328 CTR 737 (J & K)(HC)
Amir Mir v.UO (2022) 218 DTR 1 / 328 CTR 737 (J & K)(HC)

S.10: Assessment-AO must issue notice within thirty days from the end of the financial year in which he became aware of the foreign assets. If issued beyond 30 days, it must be with prior approval by the Pr. DIT or Pr. CIT
The High Court held that, though no statutory time limit for issuance of notice u/s. 10(1) is specified under the BM Act, wherever the conditions of para 6(a) to 6(c) in respect of issuance of notice u/s. 10(1) are satisfied, AO is required to issue the notice preferably within 30 days from the end of the previous year in which such information was received by him/came to his notice. However, if the notice is not issued within the period of 30 days, the reason thereof is to be recorded in writing by AO concerned, to be duly approved by Pr. DIT/ Pr. CIT concerned. As per section 11(1) of the BM Act, the assessment under the BM Act is to be passed within 2 years from the end of the financial year in which notice under section 10(1) was issued by the AO.
Jitendra Virwani v. JCIT (2022) 220 DTR 445 (Karn)(HC)

S.10: Assessment-No summons are pending-Permitted to travel to UAE and Thailand, with a direction that he shall return to India on or before 6-4-2022, subject to furnishing of security as specified and subject to furnishing a full itinerary of his stay at UAE and Thailand, along with a functional phone number [Art, 226]
The petitioner moved an application for granting permission to travel abroad. Court held that on earlier occasions also instant Court had granted permission to petitioner to travel to UAE and also to UK subject to conditions imposed and petitioner had not misused these permissions so granted Moreover, as matter was listed on 8-4-2022 for hearing, petitioner shall return back to India on or before 6-4-2022. present application of petitioner was to be

allowed by permitting petitioner to travel to UAE and Thailand, with a further direction that he shall return to India on or before 6-4-2022, subject to furnishing of security as specified and subject to furnishing a full itinerary of his stay at UAE and Thailand, including places where he would be staying in at UAE and Thailand along with a functional phone number for all such places including his personal mobile number which he shall keep operational and functional at all times. (SJ)

Jayant Nanda v. UOI (2022) 287 Taxman 201 /113 CCH 352 (Delhi)(HC)

S. 43 : Penalty — Furnishing inaccurate particulars of income — Black money — Information received from investigation wing -Foreign bank account — Search and Seizure —Non-disclosure of account inadvertent mistake — Not a case of diversion of unaccounted Indian wealth to undisclosed foreign bank accounts — Penalty cannot be levied . [S. 2(11), 60]

The Tribunal held that the money in the account did not belong to the assessee, was never used by the assessee and was part of the legacy left behind by her father in 1986 and this was duly accepted by the Revenue authorities. Even before the bank account was detected by the Revenue authorities, the entire balance in the account had been donated. The plea that such a lapse of non-disclosure of bank account, was only an inadvertent mistake, and that conscious non-disclosure or any mens rea in the non-disclosure was completely contrary to human probabilities, merited acceptance. It was not, by any stretch of logic or imagination, a case of diversion of unaccounted wealth in India to the undisclosed bank accounts abroad. Therefore, the imposition of penalty was not valid. (AY. 2017-18)

Add. CIT v. Leena Gandhi Tiwari (2022)96 ITR 384/ 216 TTJ 905 (Mum) (Trib)

S. 43: Penalty for failure to furnish return of income an information, or furnish inaccurate particulars about an asset (including interest in any entity)located outside India-Foreign Bank Account-Signatory for late Mother-Amount was donated to the Charity –Not beneficial owner-Mere no disclosure is not valid ground for levy of penalty-Deletion of penalty was affirmed.[S.10(3), Income-tax Act, 1961 132(4) 139, 153A]

The assessee was signatory in a foreign the Bank Account held by the mother. Amount in the said bank account was belong to mother. The Assessing Officer levied the penalty u/s 43A of the BMA for not disclosing the bank account in return of income. CIT(A) deleted the penalty. On appeal by the revenue the Tribunal held that, the amount held in bank account was not taxed in the hands of the assessee. The Assessee was only a signatory and held in a fiduciary capacity and was never operated by her. On account of search provisions of section. 153A had come to play and in the said return the account was disclosed. The non disclosure of account in the original return got substituted by return u/s 153A of the Act, which is advantage of the assessee. For non disclosure in previous years, the BMA Act was not in force and hence no lapses. The Non inclusion of account in its return is only technical or venial breach of law. The Order of CIT (A) deleting the penalty was affirmed. (BMA No. 1/Mum/ 2022 dt 29-3-2022 (AY. 2017-18)

Addl. CIT v. Leena Gandhi Tiwari (2022) 216 TTJ 905 /96 ITR 384 / 212 DTR 105(Mum) (Trib)

S..50: Penalty-Undisclosed Foreign income and assets-Offences and prosecution-Failure to furnish information relating to foreign income or assets in income-tax return-Time limit-Law applicable-Amendment of Section 139(5) with effect from 14-5-2016-Revised return can be furnished within one year of relevant assessment year or before completion of assessment-Revised return filed before expiry of limitation-Prosecution not valid.[S. 4, ITACT, 6, 132, 139(5) Code of Criminal Procedure, S. 200]

The Income-tax Department has filed complaint for the offence punishable under section 50 of the Black Money (Undisclosed Foreign Income and Assets) and Imposition Act, 2015 on the ground that in the course of search u/s 132 of the Act, at residence it was found that the assessee had a bank account in Bank of Baroda Sharjah Branch from which the assessee had earned interest which was not disclosed in the return. Subsequently the assessee has filed revised return in which the interest was disclosed. Trail court took cognizance and registered a criminal case against the accused. Accused filed petition for quashing the criminal proceedings.Allowing the Criminal petition the Court held, that the assessee had filed returns for every assessment year. In the returns for the assessment year 2017-18 filed on March 31, 2018 he had not declared three assets. But he subsequently filed a revised return on February 23, 2019 after making payment of tax in the voluntary disclosure scheme introduced by the Government of India. The assessee had time till September 31, 2019, i. e., one year from the date of filing the original return, in order to file the revised return. The assessee had already filed the revised return in terms of section 139(5) of the Income-tax Act, on February 23, 2019. Hence the criminal proceedings against the assessee were not valid.(AY.2017-18) (SJ)

K. Mohammed Haris v. Income-Tax Department (2022)448 ITR 707 (Karn)(HC)

Direct Tax Vivad Se Vishwas Act, 2020(2020) 422 ITR 121(St

S. 2(1)(a): Appellant-Declarant-Condonation of delay-Effect of Circular of CBDT dated 4-12-2020-The rejection of the declaration was not justified-The declarations of the assessee shall be accepted and thereafter dealt with as provided under the Act. [Art, 226]

Application was rejected on the ground that the delay was condoned. On writallowing the petition the Court held that the time for filing appeal had expired during the period from April 1, 2019 to January 31, 2020, and the assessee had filed an application for condonation of delay which was pending. He had also filed an appeal before the date of filing of the declaration. The rejection of the declaration was not justified. The declarations of the

assessee shall be accepted and thereafter dealt with as prescribed under the Act.(Direct Tax Vivad se Vishwas Act, 2020 (2020] 422 ITR (St.) 121),Circular dated December 4, 2020 ([2020] 429 ITR (St.) *1)*

Rakesh Garg v. PCIT (2022)443 ITR 137/ 211 DTR 265/ 325 CTR 440 (Raj)(HC)

S. 2(1)(a): Appellant-Declaration-Pending proceeding-Application for condonation of delay in filing appeal pending before Commissioner (Appeals)-Declaration to be considered by Designated Authority. [S.246 Art, 226]

The assessee's appeal was pending before the Commissioner (Appeals) along with an application seeking condonation of delay. On the specified date of January 31, 2020, the assessee filed a declaration under the Direct Tax Vivad se Vishwas Act, 2020. The declaration was rejected on the ground that the first appeal was filed belatedly and there was no information received from the Assessing Officer, as to whether or not the delay in filing the appeal before the appellate authority had been condoned. On a writ petition. allowing the petition, that the communication rejecting the declaration filed by the assessee under the 2020 Act was quashed and set aside. The Principal Commissioner was to accept the assessee's declaration if otherwise it was valid.(BP. 1-4-1995 to 13-12-2001)

Ritesh Bakuleshbhai Mehta v. PCIT (2022)441 ITR 287 / 285 Taxman 442 (Guj) (HC)

S. 2(1)(a): Appellant-Declaration processed and Form 3 issued To Assessee-Rejection of declaration-Not valid-State cannot claim benefit of its own mistake. [S. 4, Art, 226]
The declaration was processed and form 3 was issued to the assessee on January 27, 2021. On an order cancelling form 3 the assessee filed a writ petition challenging the order, the Court held that the last date for filing the appeal was December 13, 2019 but the appeal was filed on December 13, 2019. In such circumstances, the assessee was well within his right to have chosen to avail of the benefit of the 2020 Act and the declaration filed by the assessee had to be treated to be a valid declaration and had to be processed in accordance with the provisions of the 2020 Act. Once a declaration is issued it can be processed and taken to its logical end either may be fully in favour of the assessee or otherwise but there appears to be no provision to withdraw form 3 declaration. Referred,Superintendent of Taxes, Dhubri v. Onkarmal Nathmal Trust [1976] 1 SCC 766.*(*AY. 2014-15)

PCIT v. Asish Kumar Ghosh (2022) 444 ITR 398 / 214 DTR 257/326 CTR 841 (Cal)(HC)

S. 2(1))(a): Appellant-Delay in filing appeal condoned-Deemed to have been filed before expiry of limitation-Rejection of declaration was not valid [Art, 226]

Allowing the petition the Court held that the assessee filed her declaration on March 3, 2021 which was before the last extended date for filing the declaration, i.e., March 31, 2021. But, before March 3, 2021, the appeal was filed by the assessee before the Income-tax Appellate Tribunal on February 24, 2021 along with an application for condonation of delay. The Tribunal had accepted the application for condonation of delay and had condoned the delay, the effect would be that the appeal before the Tribunal would be construed to have been filed within time and the limitation would relate back to the date by which time the appeal against the order of the first appellate authority ought to have been filed. Hence the assessee would have to be construed to be an appellant as defined in section 2(1)(a)(i) of the Vivad Se Vishwas Act. Rejection of declaration was not valid. (Circular No. 21 of 2020, dated December 4, 2020 [2020] 429 ITR 1(St) (AY.2008-09)

Amina Khatoon (Mrs.) v. UOI (2022) 445 ITR 367/ 217 DTR 225 / 328 CTR 427 (Telangana) (HC)

S. 2(1))(a): Appellant-Protective assessment-Amounts paid under protective assessment must be returned to assessee-Same income cannot be assessed in hands of assessee more than once-The Act is not intended either to collect or retain any amount which is not due from an assessee. Under section 237 under Chapter XIX of the Income-tax Act, 1961, there is no limitation prescribed for granting refund of the amount paid in excess as tax. [ITAct, S.143(3), 154, 237, 244A, Art, 226]

The assessees opted to settle the case under the Vivad Se Vishwas Scheme, 2020 and filed forms 1 and 2. The case having been settled under the Vivad Se Vishwas Scheme, 2020 for the assessment year 2011-12, the assessees sent representations to revise the protective assessment made for the assessment year 2011-12 and consequently either to adjust the amount payable for the tax liability for the assessment year or to refund it to the assessees. Meanwhile, the appeals filed by the Department were dismissed in the light of the cases having being settled under the Vivad Se Vishwas Scheme, 2020 and form 3 issued by the Department under the Vivad Se Vishwas Act, 2020. The assessee applied for issuance of a writ of mandamus, to direct the Assessing Officer to pass an order under section 154 of the Act, deleting the protective addition for the assessment year 2014-15 of the assessee and consequently, to direct the Department either to adjust the amounts of Rs. 1,09,12,172, Rs. 1,25,90,664, Rs. 1,16,99,777 and Rs. 1,20,08,628, respectively, along with interest for the assessment year 2011-12 payable by the assessee or to refund it. Allowing the petition the Court held that an assessee cannot be taxed twice on the same income. Ultimately, the purpose of exercising power under the Act is only intended to collect correct and just tax under the provisions of the Income-tax Act, 1961 from an assessee. The Act is not intended either to collect or retain any amount which is not due from an assessee. Under section 237 under Chapter XIX of the Income-tax Act, 1961, there is no limitation prescribed for granting refund of the amount paid in excess as tax. Directed to refund the tax paid during the Assessment year 2014-15 which had became excess. Court referred the judgement of Supreme Court in Unichem Laboratories Ltd v. Collector of Central Excise (2002) 7 SCC 145 (SC) wherein the honourable supreme Court held that it is no part of duty of the Department to levy and collect tax which is not due to the Department. The relevant passage from the said decision reads as follows : '12. For the aforesaid reasons, we are of the view that denial of benefit of the notification to the appellant was unfair. There can be no doubt that the authorities functioning under the Act must, as are in duty bound, protect the interest of the Revenue by levying and collecting the duty in accordance with law-no less also no

more. It is no part of their duty to deprive an assessee of the benefit available to him in law with a view to augment the quantum of duty for the benefit of the Revenue. They must act reasonably and fairly' (AY.2011-12, 2014-15) (SJ)

Vyasa Plot and Housing Pvt. Ltd. v. Dy. CIT (2022)445 ITR 454/ 218 DTR 136 / 239 CTR 107 (Mad)(HC)
SSD Homes and Estate Developers Pvt Ltd v. Dy. CIT (2022)445 ITR 454 (Mad)(HC)
Sangupathi Properties Pvt Ltd v. Dy. CIT (2022)445 ITR 454 (Mad)(HC)
Anu Plot and Housing Pvt Ltdv. Dy. CIT (2022)445 ITR 454 (Mad)(HC)

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Vyasa Plot and Housing Pvt. Ltd. v. Dy. CIT (2022)445 ITR 454 (Mad)(HC)
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Sangupathi Properties Pvt Ltd v. Dy. CIT (2022)445 ITR 454 (Mad)(HC)
Anu Plot and Housing Pvt Ltdv. Dy. CIT (2022)445 ITR 454 (Mad)(HC)

S. 2(1)(a) : Appellant –Locus standi-Rejection of application on the ground that there is no clarity of Legal Heirs-Appeal was filed beyond limitation period-Rejection of application was held to be not valid-Directed the Designated Authority to accept the declaration [S. 3, 4(1) ITAct, S. 132, Art. 226]

Application under the DTSV of the Act was rejected on the ground that there is no clarity of legal Heirs and the appeal was filed beyond limitation period. On writ allowing the petition the Court held that time for filing the appeals against the order of CIT(A) had not expired on the date of filing of declaration. As regards the Legal Heir who desires to put an end or close to all disputes between the deceased and tax Authorities. The Rejection of application was not valid. The Court also observed that the order of the Court cannot be used by petitioner in any proceedings between petitioner and the legal heirs of Late Kalyani Bhagat too lay claim to any estate of deceased Kalyani Bhagt if there are any such proceedings /disputes pending or may arise in future.(AY. 1983-84 to 1989-90,, 2006-07)

Jayantilal K. Bhagat v.ACIT (2022) 445 ITR 515/ 324 CTR 632/ 210 DTR 81 (Bom)(HC))

S. 2(f) :Disputed tax-Amount payable by declarant-Interest-Interest granted under section 244A cannot be recovered by revenue authority under Direct Tax Vivad se Vishwas Act, 2020, by adding same to amount of disputed tax payable by assessee [S. 3, ITACT, S. 234D, 244A, Art, 226]

While calculating the disputed tax, the revenue directed the petitioner to add the amount of interest paid under section 244A of the Act. On writ allowing the petition the court held that interest granted under section 244A cannot be recovered by revenue authority under Direct Tax Vivad se Vishwas Act, 2020, by adding same to amount of disputed tax payable by assessee. Revenue was directed to accept the declaration filed by the petitioner.(AY. 2010-11)

Cooperative Rabobank U A v. CIT(IT) (2022) 284 Taxman 40 (Bom.)(HC)

S. 2(h): Disputed interest-Pendency of appeal-dispute-In liquidation for settlement of disputed interest on demand pending adjudication before company court-Interest waiver application-Eligible to make declaration.[S. 3, 4, 9, ITAct, 220(2A), Art, 226]

Held that rejection of application by the Commissioner based on FAQ to exclude a genuine disputant of tax liability from the possibility of settlement under the 2020 Act was hyper-

technical and bad in law. The interest as demanded under section 220(2A) of the 1961 Act which was 1 per cent. for every month of the period of delay as opposed to an application of rule 154 of the Companies (Court) Rules which provided for an interest ceiling at the rate of 4 per cent. interest for companies in liquidation, was a statutory benefit given to companies in liquidation. It could not be contended that the Commissioner was not qualified to account for the beneficial provisions for the assessee in liquidation though that was not the ground of rejection of the assessee's declaration under the 2020 Act. The rejection of assessee's declaration by the Principal Commissioner was to be set aside and the Commissioner directed to re-examine or reassess the assessee's declaration and decide on its merits in terms of procedure envisaged under the 2020 Act read with its Rules.(AY.1984-85, 1985-86)

Kapri International Pvt. Ltd. (In Liquidation) v. CIT (2022)447 ITR 487/ 217 DTR 401/ 328 CTR 662/ 289 Taxman 567 (Delhi)(HC)

S. 3: Amount payable by declarant-Time and manner of payment-Failure to make the payment within time prescribed-No vested right-Petition was dismissed [S. 5, Art, 226]

The assessee had opted to apply under Direct Tax Vivad Se Vishwas Scheme Act, 2020 and offer of assessee was accepted, however, he failed to make payment of amount within time specified. The assessee filed writ petition and sought extension of last date or sought to make payment of tax with late fee etc. Dismissing the petition the Court held that since there was no provision which entailed extension of time as a vested right which could be enforced by way of writ petition under article 226 of Constitution.

Amit Gupta v. UOI (2022) 288 Taxman 207/(2023) 450 ITR 118 (P& H)(HC)

S. 3: Amount payable by declarant-Credit for tax paid under Income Declaration Scheme, 2016-Denial of credit is held to be not valid-Directed the Revenue to give credit and rectify Form No. 3 issued under DTVSV Act with DTVSV rules.[Income Declaration Scheme, 2016, S. 183, 184, 185, 191, Art, 226]

The petitioner made application under the Direct Tax Vivad Se Vishwas Act 2020 (DTSV Act). The appeal of the petitioner was pending before CIT(A) for the assessment year. The issue involved in the appeal was the Revenue has not given credit for amount paid under Income Declaration Scheme,2016. While arriving at the amount payable Designated Authority did not give credit to the amount paid under IDS. The petitioner challenged the legality and validity of the refusal by the Revenue to adjust / give credit to the amount paid by the petitioner under the Income Declaration Scheme, 2016. Allowing the petition the Court held that, Sub-Section (3) of Section 187 of IDS also categorically provides if the declarant fails to pay the tax, surcharge and penalty in respect of the declaration made under Section 183 on or before the dates specified in sub-Section 1, the declaration filed by him shall be deemed never to have been made under the Scheme. This would mean that the declaration will be non-est. The Revenue cannot retain any amounts paid under a declaration which contemplated under the Scheme is deemed never to have been made. The Scheme does

not provide for Revenue to retain the tax so paid in respect of a declaration which is void and non-est. Therefore, the provision of Section 191 cannot have any application to a situation where the tax is paid but the entire amount of tax is not paid and accordingly the retention of the tax by Revenue is illegal. The Revenue was directed to give credit and rectify Form No. 3 issued under DTVSV Act with DTVSV rules. Referred Hemlatha Gargya v.CIT (2003)) 9 SCC 510, Sajan Enterprises Miraj v. CIT, WP No. 4132 of 1999 dt.13-6-2015 (SC) (UR), Patchala Seethramaiah v. CIT, 1999 SCC Online AP 495 (WP No. 844 of 2021 dt. 11.08.21) (AY. 2016-2017)

Pinnacle Vastunirman Pvt Ltd. v. UOI (Bom.)(HC)(UR)

S. 4: Filing of declaration and particulars to be furnished-Depositing the challan under minor head '200' instead of '400'-Directed to give credit and issue revised Form No 3 [Art, 226]

Assessee filed declaration in Forms 1 and 2 under Direct Tax Vivad Se Vishwas Act, 2020. Designated Authority after accepting Forms 1 and 2 issued Form 3, declined credit of tax deposited on ground that challan had been deposited under minor head '200' instead of '400'. On writ allowing the petition the court held that order rejecting credit of tax deposited on hyper technical ground that challan had been deposited under minor head '200' instead of '400' was unfair, illegal and contrary to objective of enacting DTVSV Act. Directed the Designated Authority to correct payment head, record credit of tax deposited and issue revised Form 3.

Celerity Infrastructure (P.) Ltd. v. DCIT (2022) 289 Taxman 262 / 216 DTR 321/ 327 CTR 765 (Delhi)(HC)

S. 4: Filing of declaration and particular to be furnished-Time Limits up to 31-3-2021-Appeal disposed of by Tribunal on 22-4-2021-After disposal of appeal declaration was filed-Rejection of declaration is valid [S. 2(1)(a), 3, Art, 226]

It was only after disposal of appeals by Tribunal that petitioners tried to file declarations. But those were not accepted as last date for filing declarations was over. On writ dismissing the petition the Court held that filing of declaration in terms of Vivad se Vishwas Act, is neither a judicial act nor a quasi-judicial act. It was intended as a one time measure for an eligible declarant to file declaration within prescribed period and avail benefits thereunder. Petitioners having filed declarations in third week of June, 2021 much after last date of filing declaration i.e. 31-3-2021 were not eligible to claim any benefit under Vivad se Vishwas Act. Declarations had rightly not been accepted

Talluri Vijay Rahul v. CBDT (2022) 288 Taxman 283 (Telangana)(HC)

S. 4 : Filing of declaration and particulars to be furnished-Revised declaration-Order passed thereon conclusive and no matter covered thereby to be reopened in any other proceedings-Appeals pending or filed deemed to be withdrawn-Revised fresh declaration not Maintainable and non est-Original declaration is held to be valid-Directed to issue the certificate as per law.[S.3, 5(1), 5(3), 7, 9(c), ITAct, S. 246A 253, Art, 226]

The assessee filed writ petition to consider the revised declaration filed by the assessee. Dismissing the petition the Court held that the revised fresh declaration filed by the assessee on January 23, 2021 was non est and any consequential order passed thereon was of no significance. After the declaration of the assessee was accepted by issuance of certificate dated January 20, 2021 under section 5(1) of the 2020 Act, the appeals pending before the Tribunal and the Commissioner (Appeals) pertaining to the assessment year 2012-13 were deemed to have been withdrawn by operation of law. Therefore, the appeals could not be revived or restored merely because the assessee under a mistaken notion had filed a fresh declaration which was subsequently rejected by the designated authority. The revised fresh declaration filed by the assessee was not maintainable and consequently the order passed thereon was non est.Since the second declaration filed by the assessee was not maintainable and non est the other issues raised by the parties including the issue as to whether revised declaration of the assessee could have been rejected due to initiation of the criminal prosecution against one of the directors of the company were not considered. Court also held that the assessee had raised an alternative contention that it was entitled to the benefit of original declaration filed by it. Since the revised declaration was of no effect the parties to comply with the certificate issued in favour of the assessee pursuant to the original declaration in terms of section 5(2) of the 2020 Act. If the assessee deposited the amount determined as payable by the assessee under the certificate issued earlier within a period of fifteen days it should be accepted by the authorities and the declaration filed by the assessee would be deemed to have been satisfied in terms of the provisions of the 2020 Act.(AY.2012-13)

Value Added Futuristic Management Pvt. Ltd. v. UOI (2022)447 ITR 48 / 216 DTR 373/ 328 CTR 51 / (2023) 290 Taxman 285 (Jharkhand)(HC)

S. 4: Filing of declaration and particulars to be furnished-Pendency of appeal-Condonation of delay-Appeal admitted prior to January 2020-Appeal pending-Directed the respondent to process the declaration [S. 2(1)(a), Art, 226]

The assessee on April 7, 2019, had filed an appeal challenging the assessment orders along with an application for condonation of delay. The declaration of the assessee was rejected. On writ allowing the petition the Court held that once the delay has been condoned in filing appeal, the declaration under section 4 of the Direct Tax Vivad Se Vishwas Act, 2020, prior to January 31, 2020, will fall in the category of appeal pending on the specified date.Hence the appeal was pending within the meaning of the Direct Tax Vivad Se Vishwas Act. The rejection of the declaration filed by the assessee under section 4 of the Direct Tax Vivad Se

Vishwas Act, 2020 was bad in law. Respondents were directed to process the declaration. (AY.2011-12 to 2013-14, 2015-16 and 2017-18)

Om Shivam Buildcon Pvt. Ltd. v. UOI (2022) 441 ITR 655/ 213 DTR 426/ 326 CTR 802 (Bom) (HC)

S.7: No refund of amount paid-Refund-Interest @ 5 % to be paid along with refund for delay beyond 90 days [S.3, 4, Art, 226]

The aaassessee settled the dispute under the Vivad Se Viswas Act. The assessee claimed interest on amount paid by the legal heirs. On writ the aassessee contended that money was retained without right hence the assessee is entitle for refund with interest. Allowing the petition the Court directed the Revenue to grant interest @ 5 % to be paid along with refund for delay beyond 90 days.(WP (C) 1985 / 2022 & C.M. No. 5715 / 2022 dt. 23-8-2022)
Anjul (Mrs) v.PCIT (2022) The Chamber's Journal-September-P. 124(Delhi)(HC)

S. 9(c): Act not to apply in certain cases-Disqualification of persons under prosecution-Named in charge sheet and first information report-Denial of benefit is held too be valid. [Indian Penal Code,1860, S 120B, 420, Prevention of Corruption Act, 1988, S. 131(1)(d), 132(2) Art, 226]

The assessee's declarations under the 2020 Act were rejected on the grounds that the assessee was charged with having conspired to commit offences under section 120B of the Indian Penal Code, 1860, conspiracy to commit offences was in respect of cheating under section 420 of the Code 1860 and offences under section 13(1)(d) and section 13(2) of the Prevention of Corruption Act, 1988. On a writ dismissing the petition, the Court held that (i) that in both the cases, under sections 120B and 420 of the 1860 Code and also for offences under section 13(1)(d) and section 13(2) of the 1988 Act prosecution was instituted against the assessee and first information report had been duly lodged. In both cases the assessee was charged with having conspired to commit offences under the 1988 Act casting a shadow on the monies sought to be offered to tax. The pendency of criminal proceedings against the assessee was an admitted position. The contention of the assessee that despite the pendency of these two criminal proceedings, it would not fall within the ambit of section 9(c) of the 2020 Act and that since in the first proceeding prosecution had not yet been instituted and in the second proceeding it was not punishable for offences under the 1988 Act were misconceived and baseless. The charge against the assessee under the 1988 Act would have to be read as composite whole as framed and could not be segregated. The assessee having been charged with conspiracy to have committed acts of corruption which were punishable under the 1988 Act ex facie, there was a shadow of illegality on the money sought to be offered to tax. Therefore, the assessee was not eligible to the benefit under the 2020 Act and its declarations were rightly rejected.
(ii) That even if it was assumed that the designated authority was required to delve into or consider the issue of applicability of the 1988 Act, it was trite law that there could be abettors or conspirators to the offence under section 13 of the 1988 Act who might be private persons.

The Court held that the benefits granted by the Direct Tax Vivad Se Vishwas Act, 2020, by legislative policy are not available to persons identified in section 9(c) of the Act. The purpose and intent behind this provision is clear and unambiguous that the Act would only

apply to monies acquired by legal means and not to monies generated from socio-economic offences and to ensure that the Act which is a beneficial legislation, is not utilised for regularising or seeking benefits qua tainted monies or monies which fall under the shadow of a socio-economic offence. There was a clear purpose and intent to the provisions of section 9(c) which is to ensure that revenue which has been clogged and the income which is being offered to tax is not shadowed by a likelihood of the income having arisen from socio-economic crimes for which prosecution has been instituted. The 2020 Act does not and cannot be read as providing a window to "regularise" tainted money.

Reliance Industries Ltd. v.CCIT (2022)441 ITR 434 / 209 DTR 51/ 324 CTR. 1/ 255 Taxman 610 (Bom)(HC)
Editorial: SLP of assessee dismissed, Reliance Industries Ltd. v. Chief CIT (2022) 443 ITR 358 (St) /287 Taxman 223 /114 CCH 34 (SC)

Gift-tax Act, 1958

S. 4 Gifts to include certain transfers-Deemed gift-Valuation of shares-Lock-in period-Shares not quoted shares, although companies listed-Valuation to be according to Schedule III to Wealth-Tax Act taking restrictions on transfer into account [S. 4(1)(a)), 4(1)(b), 6(1), Wealth-Tax Act, 1957, Sch. III, Part A, R. 2(9), Part C R. 11), Part H, R. 21]
The assessee, on March 2, 1993, gifted 29,46,500 shares and 69,49,900 shares, respectively, in two public limited companies of its group, both listed and quoted on the stock exchange. The shares had been allotted to the assessee on November 17, 1990 and July 10, 1991, and were under a lock-in period up to November 16, 1993 and May 25, 1994, respectively. The Gift-tax Officer held that there was a deemed gift under section 4(1)(a) and (b) of the Act to the extent of Rs. 69,78,49,800 and levied gift-tax with interest quantified at Rs. 54,01,12,525. On appeal the Commissioner (Appeals) ordered tax at Rs. 5.06 crores plus interest at Rs. 7.99 crores. The Tribunal enhanced the tax to Rs. 43.25 crores. On further appeal the High Court held the certificate issued by the stock exchange was conclusive, that there was a lock-in period, that just because the shares were quoted in the stock exchange, that by itself would not mean that some value could be attached, and the value would be so available only if the shares were traded, and that the Commissioner (Appeals)'s valuation was acceptable. On appeal to the Supreme Court affirming the decision of the High Court held that although the companies listed the valuation to be according to Schedule III to wealth-Tax Act, 1957 taking restrictions on transfer in to account.(AY.1993-94)

Dy. CIT, Gift-Tax v. BPL Ltd (2022)448 ITR 739 / 218 DTR 513 / 329 CTR 190 / (2023) 290 Taxman 6 (SC)
Editorial: BPL Ltd v. Dy. CGT (2007) 293 ITR 321 (Karn)(HC), affirmed.

S. 15: Assessment-Asset gifted-Valuation-Question of fact.[S. 15(2)]

Dismissing the appeal the Court held that except raising a bald allegation that the property had been excessively valued than the prevailing at the time of execution of gift deed, hardly any material much less substantial material was placed before the authorities under the Act, at least to canvass the ground in the court that the finding of fact was recorded without considering the material on record. The assessee or her legal heir was now contesting the ownership of the property. The burden was on the assessee or her legal heir to prove that the ownership of the property vested with someone else, not the assessee. The entries in the revenue records, or the name of the assessee in Municipal Corporation, were not conclusive as regards the ownership of the property. The Tribunal, therefore, rightly observed that the assessee failed to place contra evidence on the ownership of the property.
Azad Rahim v. ITO (2022) 444 ITR 557 (Ker)(HC)

S. 15: Assessment-Asset gifted-Valuation-Question of fact.[S. 15(2)]

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Azad Rahim v. ITO (2022) 444 ITR 557 (Ker)(HC)

Income Declaration Scheme, 2016(2016) 384 ITR 87 (St)
S. 184: Charge of tax and surcharge-Payment of tax-Credit for advance tax-Credit for advance tax must be given-Directed the respondents to issue certificate as required by Rule 4(5). [S. 183, 185 ITACT, S.199, 219 Art, 226]

The advance tax paid credit was not given to the declarant. Petitioner filed writ before the High Court. Allowing the petition the Court held that overriding effect of sections 184 and 185 of the Act of 2016 is confined to the rate at which the tax is to be imposed on the undisclosed income, surcharge to be paid thereon and the penalty. The substance of the matter, especially the fact that the advance payment made by the declarant retains the character of tax, however, cannot be lost sight of. The assessee shall be entitled to and given credit for the advance tax already paid by the assessee and the respondent No. 1 shall not refuse to issue Form No. 4 on the said count. Court also observed that there is no sustainable ground to make a distinction between TDS and advance tax for the purpose of credit; there is no reason not to equate an advance tax with TDS for the purpose of the Income Declaration Scheme, 2016; if a TDS is entitled to credit, a fortiori advance tax must get the same

dispensation. The Respondent was directed to issue certificate as required by Rule 4 (5). (AY. 2011-12 to 2014-15)

Kamla Chandrasingh Kabali v. PCIT (2022) 443 ITR 148/211 DTR 1/ 286 Taxman 580/ 325 CTR 264 (Bom)(HC)

S. 191 : Tax paid under the Scheme shall not be refunded-Paid two instalments-Default in paying final instalment-Seeking extension of time to pay third instalment-Request rejected by High Court-Direction that assessee be given benefit of amounts deposited towards first two instalments while reckoning tax liability of assessee after revised assessment. [S. 183, 185 Art, 226]

In pursuance of the Income Declaration Scheme, 2016 the assessee declared undisclosed income and out of the three instalments in which the amount could be paid under the Scheme, the assessee paid two instalments. The request of the assessee seeking extension of time to pay the third instalment to continue to avail of the benefit under the Scheme was rejected by the High Court. On appeal seeking adjustment of the amounts deposited towards the first two instalments so that in the tax liability computed by the Department after revised assessment, appropriate relief could be granted. The court on the facts directed that the assessee be given benefit of the amounts deposited towards first two instalments while reckoning the tax liability of the assessee after revised assessment.

Yogesh Roshanlal Gupta v. CBDT (2022)442 ITR 31/ 212 DTR 313/ 326 CTR 34/ 286 Taxman 95 (SC)

Editorial : Order of Gujarat High Court is modified,Yogesh Roshanlal Gupta v.CBDT (2021) 432 ITR 91 /199 DTR 81/ 319 CTR 389 / 280 Taxman 278 (Guj) (HC)

S. 195 : Power to remove difficulties-Not depositing the first instalment with in time-Board refusing to condonation of delay-Concession and excess indulgence would have demotivating effect on honest taxpayers making regular and prompt tax deposit-Dismissal of application is held to be not justified. [S. 184, ITA, S. 119(2), Art.14]

PetitionerchallengedtheorderoftheCBDT refusing tocondonethedelayinpaying firstinstalmentofthetaxpayableunderIDS2016.Dismissingthepetition the Court held that the view expressed by the CBDT stating that, concession and excess indulgence would demotivating effect on honest taxpayers making regular and prompt tax deposit. High Court held that dismissal ofapplicationisheldtobejustified. On appeal the Court held that amount with interest stood deposited in terms of CBDT Notification No. 103/2019, dated 13-12-2019 assessee would be entitled to benefit of Income Declaration Scheme of 2016.(CBDT Circular March 28, 2017 (2017) 393 ITR 77 (St), Notification dated 13-12-2019 (2020) 420 ITR 38 (St)

Sadhana R. Jain v. CBDT (2022) 449 ITR 155/ 287 Taxman 562/218 DTR 214 / 328 CTR 872 (SC)

Editorial : Order of High Court set aside, Sadhana R.Jain v CBDT (2019) 174 DTR 385/ 307 CTR 207 / 103 taxmann.com 70 (Bom) (HC)

Interest-tax Act, 1974

S. 2(5B) : Charge of tax-Financial company-Transfer of distribution business to a new company-Matter remanded-Interpretation of taxing statute-Charging provision must be construed strictly.[S. 2(7)]

Court held that the appellate authorities had failed to mention the sub-clause of section 2(5B) of the Act under which the assessee fell. The expression "financial company" as defined under section 2(5B) of the Act means "a company" carrying on activities as enumerated in sub-clauses (iv) to (v) thereof. The assessing authority had proceeded on the premise that the assessee fell within the meaning of "residuary non-banking financial company" whereas, the Commissioner (Appeals) confirmed the order of the assessing authority, treating the assessee as "any other financial company" and his order was affirmed by the Tribunal merely extracting his findings. This course adopted by the appellate authorities were not correct. The aspect relating to identifying the "taxable person" is an essential criterion for the charge to get attracted. The order of the Tribunal was set aside and the matter was remanded to the Tribunal to examine the facts as regards the activity of the assessee, and set out under which sub-clause of the definition of "financial company" under section 2(5B) of the Act the assessee would fall so as to attract charge under the 1974 Act and thereafter pass appropriate orders. Referred CWT v. Ellis Bridge Gymkhana (1998) 229 ITR 1 (SC) **" the rule of construction of a charging section is that before taxing any person, it must be shown that he falls within the ambit of the charging section by clear words used in the section and no one can be taxed by implication "**(AY.1997-98 to 2000-01)

Dadha Pharma (P.) Ltd. v. ITO (2022) 442 ITR 93 (Mad) (HC)

Kar Vivad Samadhan Scheme, 1988

S. 88: Tax arrear-Amount payable-Adjustment of refund was made as per request of the assessee-Not disclosed the truth and suppressed the communication-Writ petition was dismissed [S. 245, Art, 226]

The petitioners application was rejected on the ground that there was no tax arrears payable by the assessee. The assessee filed the writ petition and contended that adjustment of the refund was illegal and without informing the assessee. Dismissing the petition the Court held that the petitioner has suppressed the communication addressed by the Chartered Accountant of the assessee, stating that the refund of tax be adjusted against the tax demand of the asessee firm. The Court observed that the conduct of the petitioner is suppressing a material fact intends to impede and prejudice the administration of justice. Judiciary is the bedrock

and hand maid of orderly life and Civilized Society. Court referred the judgement of Apex Court in Sciemed Overseas Inc v. BOC India Ltd 2016 ALL SCR 370, S.P. Chengavaraya Naidu (Dead) by LRs. v. Jagannath (Dead) by LRs. (1994) 1 SCC 1, Oswal Fats and Oils Ltd v. Additional (Admisntrator)Bareilly Division, Bareilly (2010) 4 SCC 728 Court held that one who comes before the Court must come with clean hands and unhealthy trend in filing of affidavits which are not truthful should be strongly discouraged. (AY. 1987-88)

Anand Nagar & Company v. CCIT (2022) 444 ITR 552/ 209 DTR 313 / 324 CTR 370 (Bom) (HC)

Pradhan Mantri Garib Kalyan Deposit Scheme, 2016 (PMGKY)-Finance Act, 2016.

S. 199A: Undisclosed Income-Failure to deposit the amount-willing to deposit with interest-Directed the department to appropriate sum from amount held by it to scheme and return the balance amount [S. 199D, 199E, 199F, Art, 226]

Held, allowing the petition the Court held that the assessee had complied with the requirements of sections 199D and 199E inasmuch as the tax at the rate of 33 per cent., surcharge at the rate of 33 per cent. on the tax and penalty at the rate of 10 per cent. had been received by the Department and credited to the respective authority. It was only 25 per cent. of the penalty which was required to be deposited with the respondent-authorities for a period of four years in terms of section 199F which had not been complied with. This also the assessee sought to comply with by depositing with the bank but was unable to do so. The Department continued to have within its possession a sum of Rs. 14.98 lakhs. The Scheme could have been simplified inasmuch as from and out of the undisclosed amount seized, the amount required to be adjusted under sections 199D, 199E and 199F could have been so adjusted and the balance returned to the assessee as long as the assessee wished to avail of the benefit of the Scheme. Instead of doing so, the Scheme was made burdensome inasmuch as the amount was seized and thereafter, the assessee was required to make payment of tax, surcharge and penalty as also deposit the amount under section 199F in the particular Scheme. This resulted in unnecessary administrative burden and costs. The assessee had tried to deposit the amount by the application in form 2 as required under the Scheme. It was only on account of the bank not accepting the deposit that form 2 could not be got counter signed with an acknowledgment from the bank and submitted to the Department. The assessee had made all efforts to try and comply with the requirement of the Scheme and ought not to be denied the benefit of the Scheme especially when he had stated that he was still willing to deposit the amount for a period of four years from today and would not claim any interest thereon. The respondents were to appropriate the sum equivalent to Rs. 7,50,000 of the amount held by them to the Scheme and return the balance amount of Rs. 7,50,000 to the assessee within 30 days.

Sabeel Mkohammed Sirajahmed Umachigi v. ITO (2022) 440 ITR 99 (Karn) (HC)

Voluntary Disclosure of Income Scheme, 1997 (Finance Act, 1997, (1997) 225 ITR 113 (St) (141)

S. 68: Voluntary disclosed income not to be included in the total income-Voluntary disclosed income not to affect finality of completed assessment-Tax in respect of voluntary disclosed income not refundable-Assessee cannot seek to reopen assessment of income disclosed under scheme-Not entitled to refund of tax paid-Cannot disclose part of his income under scheme and disclose balance in a belated return [S. 64, 69, 70, ITAct, S.139, 264]

Dismissing the writ petition the Court held that the assessee first availed of the benefit of the Scheme by submitting the return on July 1, 1997 and December 31, 1997 for the assessment years 1993-94 to 1997-98 and paid the Income-tax at 30 per cent. Thereafter, he filed the belated Income-tax returns under section 139 on January 23, 1998 and deducted income so disclosed in the Scheme, i. e., voluntarily disclosed income. For the assessment years 1993-94 to 1997-98, he had declared his income at Rs. 13,74,947 with the description of assets, i. e., cash, debtors, shares and bank account and paid Income-tax of Rs. 4,12,482 on December 26, 1997. Thereafter, he submitted the returns for those two assessments years 1996-97 and 1997-98 declaring income from salary, NSC, bank, Unit Trust, mutual fund, etc., at Rs. 3,74,234 and deducted the income under the Scheme and claimed "nil" tax liability to claim the refund. The assessee did not furnish any return under section 139 before December 31, 1997, and therefore, in the voluntarily disclosed income, he ought to have disclosed all his income from all the sources before December 31, 1997. However, he did not disclose any income by submitting the return under section 139. He submitted the return under section 139, after December 31, 1997, i. e., January 23, 1998 to bring his case within section 64(1)(b) of the 1997 Act. He submitted belated Income-tax returns under section 139 but as per the requirement of section 64(1)(b) that ought to have been filed before the date of commencement of the Scheme. Since he did not submit any return under section 139 before this Scheme, he ought to have disclosed his entire income. The Income-tax Officer had rightly rejected the returns for the assessment years 1996-97 and 1997-98 under section 143(1)(c). The Commissioner was justified in dismissing the revision petition against the order.(AY.1996-97, 1997-98)

Subhash Chandra v. CIT (2022)448 ITR 152/ 212 DTR 315 / 326 CTR 36 (MP)(HC)

Wealth-Tax Act, 1957

S. 2(ea):Assets-Urban land-Agreement for sale of land to developers in December 2000-Possession was given to buyers-Buyers conveying the land to third person in August 2007-Value of land not assessable in hands of assessee. [S. 2(n) 3, 16(3), 17]

Allowing the appeal the Court held that a combined reading of clause 10.1(g), clause 13.1, 13.2 and clause A(viii) of annexure A together with the "No objection" under Chapter XX-C of the Income-tax Act, 1961 and the letter written by Shri Dhingra prima facie demonstrated that the developers did have power to alienate their portion of the property; and they had entered into the property. It was a different matter if the project did not progress further. A mere failure of the project did not undo the acts of the parties. The order passed by the Tribunal was not sustainable in the facts and circumstances of this case. The value of the lands was not assessable to wealth-tax in the hands of the assessee.(AY.2004-05 to 2007-08)

Noorani Properties (P.) Ltd. v.CIT (2022)449 ITR 460 / 216 DTR 296/ 328 CTR 702 (Karn)(HC)
Verde Developers (P) Ltd v.CIT (2022)449 ITR 460 / 216 DTR 296/ 328 CTR 702 (Karn)(HC)
Triad Resorts and Hotels (P) Ltd v.CIT (2022)449 ITR 460 / 216 DTR 296/ 328 CTR 702 (Karn)(HC)

S. 2(ea):Assets-Stock in trade-Urban land-Net wealth-Special Township and Tourism Project-Stock in trade-Not liable to wealth-tax-The aggregate value of debt owed by Respondent in respect of assets owned by Respondent have to be reduced from the aggregate value of asset belonging to Respondent. [S. 2(e)(a)(v), 2(m), Bombay Tenancy and Agricultural Lands Act, 1948, S. 63-IA(1)]

Respondent was developing a project in the name of "Mega City" spread over 600 acres of land at Panvel. The project was duly approved by State Government under the provisions of Special Township Development Scheme. The land was purchased in the financial year 2008-09 and 2009-10. In the financial statement of Respondent, the land was reflected as inventories, i.e., stock in trade. Therefore, Respondent did not take this land into account while computing net wealth under the Wealth Tax Act. According to Respondent, it was not an asset which is covered by Wealth Tax being stock in trade and excluded for 10 years from the date of acquisition. Notwithstanding the fact that Respondent had started preliminary work to develop a special township after proper approval of the Government and as per the sanction letter of State Government dated 9th August, 2007 Respondent was required to complete the work of development of special township within a period of 15 years, the Assessing Officer did not accept the contention of Respondent and held that any land which was acquired for industrial purpose, does not form part of stock in trade as the same remained unused for two years, and it will form part of wealth of Respondent. The Assessing Officer further held that Respondent was not a dealer in land who is engaged in business of buying and selling of land and the land acquired by Respondent can not be considered as an inventory. On appeal the CIT(A) held that the Assessing Officer has actually allowed all

expenses incurred by Respondent as business expenses, which would mean Respondent was pursuing development work and hence land in question would not fall within the definition of 'Urban Land' being stock in trade and business asset of Respondent. On appeal the Tribunal held that the explanation (1)(b) attached with Section 2(ea) of the Act clearly specified that any land held by assessee as stock in trade for a period of 10 years from the date of acquisition will not be included in the definition of 'Urban Land'. ITAT also held that as per Section 2(m) of Wealth Tax Act, while determining the wealth tax liability of Respondent, the aggregate value of debt owed by Respondent in respect of assets owned by Respondent have to be reduced from the aggregate value of asset belonging to Respondent. On appeal by the Revenue High Court affirmed the order of the Tribunal.(AY. 2010-11, 2011-12, 2012-13)

PCWT v. Valuable Properties Pvt Ltd (2022) 220 ITR 298 / (2023) 331 CTR 81 (Bom)(HC)

S. 17 : Reassessment-Tangible material-Assessment cannot be reopened for redetermination of value based on subsequent sale of property-Reassessment unsustainable-Existence of alternative remedy-Not bar to writ. Art, 226]

The assessee sold a property during the year 1995 and disclosed the sale consideration in her return for the assessment years from 1990-91 to 1995-96. The Assessing Officer issued notices wherein he had merely stated that there was reason to believe that the net wealth chargeable to tax for the assessment years 1990-91 to 1995-96 had escaped assessment within the meaning of section 17 of the Act. The assessee filed her return for the assessment year 1996-97 also. Thereafter, the Assessing Officer passed reassessment orders dated March 26, 2002 determining the value of the property as on the valuation date on the premise that the assessee had under-estimated its value and the assessee did not adopt the fair market value of the property. On a writ petition against the reassessment orders the single judge held that a reassessment could not be made based on the sale of the asset, which had taken place long after the assessment and hence, there was no material to establish that the assessee had not disclosed true and full particulars on the valuation of the property. On appeal. On appeal order of single judge is affirmed.Referred CIT v. Foramer France (2003) 264 ITR 566 (SC)(AY.1990-91 to 1996-97)

ITO v. Sarojini Ramaswamy (Deceased) (2022)441 ITR 674 / 210 DTR 161/ 325 Taxman 47 (Mad) (HC)

Interpretation of taxing statutes.

Interpretation of taxing statutes-Date of applicability of a statutory amendment-Amending provisions-to be considered in light of history of legislation and what lawmakers intended by amendment-.Aids to construction-Speeches made in legislature can be looked into-Circulars-Binding upon Departmental Authorities if they advance proposition within framework of statute-Not binding where contrary to statute-Not binding on courts-Definition-Unless the context otherwise requires.[S. 10(20A), 10(23C), 10(46), 11, 11(4), 11(4A), 12, 12A, 12AA, 13(8), 143(3)

The observations of the Honourable courts are, the words of a statute are to be construed in their terms, according to the circumstances in which they occur. At the same time, statutes, particularly amending provisions, may be considered in the light of the previous history of the legislation and the changes in underwent to discern, what is intended by the lawmakers when an amendment is introduced or new law is enacted. Speeches made in the legislature or Parliament can be looked into for throwing light on the rationale for an amendment. Circulars are binding upon the Departmental authorities, if they advance a proposition within the framework of the statutory provision. However, if they are contrary to the plain words of a statute, they are not binding. Further more, they cannot bind the courts, which they have to independently interpret the statute, in their own terms. At the best,in such a task, they may be considered as Departmental understanding on the subject and have limited persuasive value. The term " unless the context otherwise requires" merely signifies that in case there is anything expressly to the contrary, in any specific provision in the body of the Act, a different meaning can be attributed. However, to discern the purport of a provision, the term, as defined, has to prevail, whenever the expression is used in the statute. This rule is subject to the exception that when a contrary intention is plain, in a particular instances, that meaning is to be given.

ACIT (E) v.Ahmedabad Urban Development Authority (2022)449 ITR 1 / 219 DTR 209/ 329 CTR 297 (SC)

Interpretation of taxing statutes--Literal construction-Exemption provisions-Assessee Must Strictly Comply With Conditions. [[S. 10B(5), 10B(8), 72, 80, 139(1),139(3) 139(5)]

The dismissal of the special leave petition against the decision of the Delhi High Court in the case of Moser Baer as withdrawn due to there being low tax effect keeping the question of law open could not be held against the Revenue. Chapter III and Chapter VI-A of the Act operate in different realms and the principles of Chapter III, which deals with "incomes which do not form a part of total income", cannot be equated with the mechanism provided for deductions in Chapter VI-A, which deals with "deductions to be made in computing total income". Therefore, rulings on the interpretation of Chapter VI-A will not be applicable while considering the claim under section 10B(8) of the Act

PCIT v.Wipro Ltd. (2022)446 ITR 1 / 216 DTR 1/ 327 CTR 381/ 140 taxmann.com 223 (SC)

Interpretation of taxing statute-The principles of judicial discipline and propriety and binding precedent-Unless there is a stay obtained by authorities under Income-tax Act, 1961 from higher forum, mere fact of filing appeal or SLP will not entitle authority not to comply with order of High Court-Court directed the Registrar General to forward the copy of the judgement for circulating amongst authorities under the Income tax-Act, 19961 and for the observance of the principles of the judicial discipline and propriety. [Art, 141, 226, 227]

The principles of judicial discipline and propriety and binding precedent, are as follows :

(a) Judicial discipline and propriety are the two significant facets of administration of justice. The principles of judicial discipline require that orders of the higher appellate authorities are followed unreservedly by the subordinate authorities. The mere fact that the order of the appellate authority is not "acceptable" to the Department, in itself an objectionable phrase, or that is the subject matter of an appeal can furnish no ground for not following it unless its operation has been suspended by a competent court. If this healthy rule is not followed, the result will only be undue harassment to assessees and chaos in administration of tax laws.

(b) Just as judgments and orders of the Supreme Court have to be faithfully obeyed and carried out throughout the territory of India under article 141 of the Constitution, so should be judgments and orders of the High Court by all inferior courts and tribunals subject to supervisory jurisdiction within the State under articles 226 and 227 of the Constitution.

(c) If an officer under the Income-tax Act, 1961 refuses to carry out the clear and unambiguous direction in a judgment passed by the Supreme Court or High Court or the Income-tax Appellate Tribunal, in effect, it is denial of justice and is destructive of one of the basic principles in the administration of justice based on hierarchy of courts.
(d) Unless there is a stay obtained by the authorities under the Income-tax Act, 1961 from a higher forum, the mere fact of filing an appeal or special leave petition will not entitle the authority not to comply with the order of the High Court. Even though the authority may have filed an appeal or special leave petition, where it either could not obtain a stay or the stay is refused, the order of the High Court must be complied with. Mere filing of an appeal or special leave petition against the judgment or order of the High Court does not result in the assailed judgment or order becoming inoperative and unworthy of being complied with.

Referred, UOI v. Kamalakshi Finance Corporation Ltd (1992) Suppl (1) SCC 443, Official Liquidator v. Dayanand (2008) 10 SCC 1, Kishore Samrite v. State of Uttar Pradesh (2013) 2 SCC 398, Bishnu Ram v. Prag Sikia (1984) 2SCC 488, Bhopal Sugar Industries Ltd v. ITO (1960) 40 ITR 618(SC), AIR 1961 SC 182, CIT v. Ralson Industries Ltd (2007) 288 ITR 322 SC / (2007) 2 SCC 326, UOI v. Namit Sharma (2013) 100 SCC 359, Dr. H. Phunindre Singh v. K.K. Sethi (1998) 8 SCC 640, Ghaziabad Development Authority v. Balbir Singh (2004) 5 SCC 65, Asit Kumar Das v. J.Panda, The Chief Post Master General (CA No 1227 of 2015 dt 22-1-2015, Pramod Kumar Dixit v. Central Administrative Tribunal (WP No. 1082 (SB) of 2009 dt.15-12-2010, Sadanand Mukerji v.State of U.P.2009 (1) UPLBBEC 167, PCIT v. Assocciated Cables Pvt Ltd (ITA No. 293 of 2016 dt. 3-8-2018 (Bom)(HC)

Court directed the Registrar General to forward the copy of the judgement for circulating amongst authorities under the Income tax-Act, 19961 and for the observance of the principles of the judicial discipline and propriety

Mohan Lal Santwaniv. UOI (2022)449 ITR 476/ 287 Taxman 634 / 218 DTR 313 / 329 CTR 113 (All)(HC)

Interpretation-Binding precedent-Decision of Supreme Court binding on all Courts and all authorities-Appellate Tribunal-Decision of Tribunal is binding on all authorities [S. 144C, 254(1), Art, 226]

Article 141 of the Constitution of India says that the law declared by the Supreme Court shall be binding on all courts within the territory of India. Therefore, it is the bounden duty of all authorities whether administrative or quasi judicial or judicial to follow the law declared by the Supreme Court.
Principles of judicial discipline require that the orders of the higher appellate authorities should be followed unreservedly by the subordinate authorities. Unless there is a stay, the order or decision of the jurisdictional Tribunal is binding on all Income-tax authorities within its jurisdiction. Referred UOI v. Kamlakshi Finance Corporation Ltd (1992) Supp (1) SCC 443, Collector of Customs v. Krishna Sales (P) Ltd (1994) Supp (3) SCC 73, Ganesh Beenzoplast Ltd v. UOI (2021) 16 GST-OL 519/ (2020) (374) ELT 552 (Bom)(HC), Himagiri Buildcon and Industries Ltd v.UOI (2021) 16GSTR-OL 545 (Bom)(HC)

Mylan Laboratories Ltd. v. NFAC (2022)446 ITR 734 / 287 Taxman 40/ 220 DTR 105/ 329 DTR 502 (Telangana) (HC)

Interpretation of taxing statutes-Non obstante clause-Additional tax on distributed profits [S. 2(22)(a), 115-O, Small Industries Development Bank of India Act, 1989, S. 29(2), 50]

Section 50 of the SIDBI Act contains *non obstante* clause giving overriding effect over provisions of Income-tax Act in respect of any income, profits, gains derived or any amount received by the company. It is well settled that a provision beginning with *non obstante* clause must be enforced and implemented by giving effect to the provisions of the Act and by limiting the provisions of other laws. A *non-obstante* clause is generally appended to a Section with a view to give the enacting part of the Section, in case of conflict, an overriding effect over the provision in the same or other Act mentioned in the *non-obstante* clause. It is equivalent to saying that despite the provisions of the Act mentioned in the *non-obstante* clause, the provision following it will have its full operation or the provisions embraced in the *non-obstante* clause will not be an impediment for the operation of the enactment of the provision in which the *non-obstante* clause occurs. But, the same principle cannot be applied, *ipso facto*, when one comes across two or more enactments containing similar *non-obstante* clauses operating in the same or similar direction. Relied on the Supreme Court in *Central Bank of India* v. *State of Kerala* [2009] 4 SCC 94 observed thus :-
"103. A *non obstante* clause is generally incorporated in a statute to give overriding effect to a particular section of the statute as a whole. While interpreting *non obstante* clause, the court is required to find out the extent to which the legislature intended to do so and the context in which the *non-obstante* clause is used. This Rule of interpretation has been applied in several decisions.".(AY. 1997-98 to 2000-01)

Small Industries Development Bank of India v. CBDT (2022) 441 ITR 80/ 285 Taxman 113 // 209 DTR 171/ 324 CTR 317 (Bom) (HC)

Precedent-Binding nature-Decisions of non-jurisdictional High Court- Only in the absence of benefit of guidance by the jurisdictional High Court on that issue [S. 68, 153A] ,
Held that the decisions of the non-jurisdictional High Court are followed by the lower authorities, only in the absence of benefit of guidance by the jurisdictional High Court on that issue, on account of the persuasive effect of these decisions and on account of the concept of judicial propriety; mere pendency of the appeal, against a binding judicial precedent, in a higher judicial forum does not dilute, curtail or otherwise narrow down its binding nature. Followed , Mumbai Kamgar Sabha v. Abdulbahi Faizullbhal AIR 1976 SC 1455 , CIT v. Thana Electricity Supply Ltd.(1994) 206 ITR 727 (Bom)(AY.2009-10)
Luxora Infrastructure (P) Ltd. v. Dy CIT (2022) 220 DTR 65 / 220 TTJ 568 / (2023) 198 ITD 0713 (Mum)(Trib)

Allied laws

Bengal Agricultural Income-tax Act, 1944

S. 34:Method of computation-Agricultural Income-tax-Appeal dismissed-Alternative remedy-Writ is not maintainable [West Bengal Taxation Tribunal Act, 1987, Art, 226]

First Appellate Authority confirmed the order of the Assessing Officer. The appellant filed writ against the said orders. Dismissing the petitions the Court held that that writ is not maintainable when a statutory alternative remedy is available. The Court also observed that the orders passed by the first appellate authority were neither without jurisdiction nor in violation of principles of natural justice nor there was any procedural illegality in the proceedings before the first appellate authority.(AY. 2007-08, 2009-10)

B. D. Tea Estates Pvt. Ltd. v State of West Bengal (2022) 444 ITR 504 (Cal)(HC)

Central Goods and Service Tax Act, 2007 (CGST)

S. 16: Input tax credit-Eligibility and conditions for taking input tax credit-Scrutiny of returns-Conversion of partnership firm into Private Limited company-ITC claim made to jurisdictional GST officer in another State should not be rejected due to change in GSTIN as a result of change of partnership in to private limited Company [S.61, Art, 226]

Allowing the petition the court held that ITC claim made to jurisdictional GST officer in another State should not be rejected due to change in GSTIN as a result of change of partnership in to private limited Company, if assessee was other wise eligible to avail ITC.(W.P.Nos 2869 & 2876 of 2022 dt 15-3-2022)

Travancore Mats & Mattings Pvt Ltd (2022) (65) G.S.T.L. 35(Mad)(HC)

S. 29: Cancellation or suspension of registration-Show cause notice-Adjudication order vague-Cancellation of Registration was not sustainable-Stricture against Department-Adjudication order was quashed-Court observed that it was beyond under standing of Court as to why its officers were not ready to understand and improve.[Art, 226]

Writ petition was filed against the cancellation of Registration. Allowing the petition the Court held that the show cause notice was vague and cancellation of registration is something beyond vagueness. The Court observed that it is very disturbing to note that this is an every day affairs. Scores of petitions of the present type come up before us everyday because such absurd and vague orders being passed by the officers of the GST Department. Court also observed that we are not able to understand how the Department is functioning, why the Department is acting in such a high handed manner. Over a period of time, this Court must have passed not less than hundred orders criticizing such vague show cause notices and vague final orders cancelling the registration. Why the officers are not ready to understand and improve them selves. Accordingly the order was quashed. (SCA No. 2322 of 2022 dt. 9-2-2022)

Rafik Alibhai Makvana v. State of Gujarat (2022) (59) G.S.T.L 3 (Guj)(HC)

S. 62 : Assessment of non-filers of returns-Interest on delayed payment of tax-Central Goods and Services Tax Rules, 2017-Registration-Strictures against Departmental Officers-Cancellation of registration by Commercial Tax Officer on basis of vague show cause notice in one line order-Officer making mockery of justice and provisions of law-Not to remain in office on such understanding of law-Cancellation of registration was set aside-Liberty was given authority to issue fresh show cause notice [[S. 50, R. 21, 86A, Central Goods and Services Tax Rules, 2017.]

Dealing with cancellation of Registration the Court observed that no reasons was assigned in show cause notice, mere incorporation of Rule 21 of the Central Goods and Service Tax Rules, 2017 is insufficient. Authority to at least furnish some information about bogus billing alleged. Contention that input tax credit also blocked in exercise of powers under Rule 86A ibid also not justified as order already outlived its statutory life period of one year. Blocking of inpute tax credit also to end. Cancellation of registration set aside on ground of vague show cause notice benefit of any material particulars with liberty authority to issue fresh show cause notice. With caution that fresh show cause notice should contain all necessary details and information about alleged bogus billing to enable assessee to file effective reply to it. Court also observed that cancellation of registration by Commercial Tax Officer on basis of vague show cause notice in one line order. Officer making of justice and provisions of law, not to remain in office on such understanding of law.

Vageesh Umesh Jaiswal v. State of Gujarat (2022) (64) G.S.T.L. 177 (Guj.)(HC)

S. 74 : Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed, or utilised by reason of fraud or any wilful-misstatement or suppression of facts-Adjudication-Natural justice-Adjudication-Show cause notice-Recovery-Strictures against department-Commissioner of Sate Tax directed to issue appropriate guidelines /circular / notification elaborating the procedure for issuance of show cause notice, adjudicating and recovery proceedings.[S. 73(5), 74(1), 74(5), Art, 226]

Against initiation of adjudication without show cause notice was void ab initio and adjudication order was non est for violation of mandatory provisions of Act and principles of natural justice. The Court held that High Court can entertain writs against adjudication order without relegating petitions to appeal remedy where several writ petitions were filed for procedural violations. The Court held that several writ petitions filed for stark violation of mandatory GST Act provisions and natural justice principles. Commissioner of Sate Tax directed to issue appropriate guidelines /circular / notification elaborating the procedure for issuance of show cause notice, adjudicating and recovery proceedings.(WP. No.(T) Nos 3908 /3909 of 2020 dt. 18-4-2022)

Godavari Commodities Ltd v. State of Jharkhand (2022) (65) G.S.T.L. 194 (Jharkhand)(HC)

S.79:Recovery of tax-Order passed relying on material which was supplied to violates principle of natural justice-Matter remanded back for fresh adjudication after furnishing material relied upon and after giving an opportunity of personal hearing to the petitioner.[Art, 226]

Allowing the petition the Court held that order passed relying on material which was supplied to violates principle of natural justice. Matter remanded back for fresh adjudication after furnishing material relied upon and after giving an opportunity of personal hearing to the petitioner. (WP No. 5999 of 2021 dt 20-4-2022)

Lakshmi Sowjanya Enterprises v. ACIT(2022) (64) G.S.T.L. 158(AP)(HC)

S. 83 : Provisional attachment to protect revenue in certain cases-Provisional attachment of bank account under sections, 62, 63, 64, 67,73 or 74 are not maintainable in absence of any proceedings. [S. 62, 63, 64, 67, 73, 74, Art, 226]

Allowing the petition the Court held that provisional attachment of bank account under sections 62, 63, 64, 67,73 or 74 are not maintainable in absence of any proceedings. Order of provisional attachment was set aside and directed the authorities to defreezd the bank account of the petitioner immediately.(WP No. 4733 of 2021 dt 7-9-2021)

Real Trade v.UOI 2022 (56) G.S.T.L 161 (Bom)(HC)

S. 83 : Provisional attachment to protect revenue in certain cases-Provisional attachment of bank account under sections, 62, 63, 64, 67,73 or 74 are not maintainable in absence of any proceedings. [S. 62, 63, 64, 67, 73, 74, Art, 226]

Allowing the petition the Court held that provisional attachment of bank account under sections 62, 63, 64, 67,73 or 74 are not maintainable in absence of any proceedings. Order of provisional attachment was set aside and directed the authorities to defreezd the bank account of the petitioner immediately.(WP No. 4733 of 2021 dt 7-9-2021)

Real Trade v.UOI 2022 (56) G.S.T.L 161 (Bom)(HC)

S. 107: Appeals to Appellate Authority-Powers of Revisional Authority-Limitation-Electronic filing of appeals-Orders received physically-Orders were not uploaded-Limitation period would start when order is uploaded on GST portal and not when order is received physically [S. 108 Art, 226]

The appeals filed are rejected on the ground that the appeals are barred by limitation and there is no provision for condoning delay of more than 30 days. On Writ allowing the petition the Court held that orders were never uploaded in web portal. Limitation period would start when order is uploaded on GST portal and not when order is received physically.(WP (C) Nos. 8960 of 2021 dt. 17-12-2021)(SJ)

Jose Joseph v. Asst. Commr. of Central Tax (2022) (62) G.S.T.L 464 (Ker)(HC)

S. 107 : Appeals to Appellate Authority-Certified copy of assessment order-Non submission of certified copy of assessment order while filing the appeal-Technical defect-Writ is allowed-Appellate Authority was directed to dispose of the appeal with reasoned order in accordance with law [Odisha Goods and Service tax Act, 2017, S. 107, Limitation Act, 1963, S.5, Art, 226]

Allowing the petition the Court held that non submission of certified copy of assessment order while filing the appeal is only technical defect. Assessee was allowed to file the certified copy as collected and the Appellate Authority was directed to dispose of the appeal with reasoned order in accordance with law.(W.P.(C) No. 14163 of 2022 dt 29-6-2022)

Atlas Pvc Pipes Ltd v. State of Odhisha (2022) (65) G.S.T.L.45O (Orisa)(HC)

S. 169: Service of notice in certain circumstances-Show cause notice and consequential orders-Required to be signed by concerned officer and same had to be affixed with digital signature if they were up loaded on GST portal.[Art, 226]

Held that show cause notice and consequential orders, required to be signed by concerned officer and same had to be affixed with digital signature if they were up loaded on GST portal.The contention of the Department that the concerned officer was not required to sign show cause notice and consequential orders when they were uploaded in GST portal as per section 169 of the GST Act.(WP. (c) No. 4712 of 2022 dt. 21-7 2022)

Railsys Engineers Pvt Ltd v. Add.CIT (2022) (65) G.S.T.L. 159 (Delhi)(HC)

Chartered Accountants Act, 1949

S. 21: Professional misconduct –Scheme of Merger-Report was subject to judicial proceedings before High Court-Once the scheme of merger was sanctioned there would be no reason for Disciplinary Committee of ICAI to adjudicate the correctness of the report [S. 22, Negotiable Instruments Act, 1881, S. 138, Criminal Procedure Code,1973, S. 482]

Appeal was preferred against the order of single judge. Dismissing appeal the Court held that once the Report was subject to judicial proceedings before High Court and the scheme of merger was sanctioned there would be no reason for Disciplinary Committee of ICAI to adjudicate the correctness of the report.

Wholesale Trading Services (P) Ltd v. ICAI (2022) 285 Taxman 216 (Delhi)(HC)

S. 22 :Professional and other misconduct-Recommendations made by Council were not supported by independent reasons and High Court had accepted recommendations of Council without applying its own logic to this aspect of matter, matter was to be remanded to Council to reconsider matter afresh after granting appellant an opportunity of being heard [S. 21]

The appellant was a chartered accountant having his Office as Dinesh K. Agrawal & Co., Chartered Accountants. Information was received by the Institute of Chartered Accountants of India (ICAI) from the Office of the Inspecting Assistant Commissioner of the Income-tax alleging that the appellant was guilty of professional and/or other misconduct and had interpolated assessee's copies of challans to show higher figures and claimed the higher amount from them. Accordingly, ICAI referred the case of the appellant to the Disciplinary Committee constituted under the Chartered Accountants Act, 1949. The Council accepted the Report of the Disciplinary Committee and found that the appellant was guilty of 'other

misconduct' under section 22 read with section 21 of the Chartered Accountants Act, 1949.The Council also decided to recommend to the High Court that the name of the appellant be removed from the Register of Members for a period of two years. The High Court, on consideration of the reference, confirmed the Resolution of the Council that the appellant was guilty of 'other misconduct' warranting appropriate punishment and, therefore, ordered the removal of the name of the appellant from the membership of the respondent Institute for a period of five years.The appellant filed a review petition before the High Court for review of the aforesaid order. The said review petition was also dismissed by the High Court. On appeal before the Supreme Court,allowing the petition the Court held that where Council of Chartered Accountants of India finds any member of Institute to be guilty of misconduct, it is required under Act to forward matter to High Court with its recommendations and High Court has to pass final order either dismissing complaint or penalizing member of Institute. However, recommendation/order of Council should contain reasons for conclusion as recording of reasons is a principle of natural justice and every judicial/quasi-judicial order must be supported by reasons to be recorded in writing to ensure transparency and fairness in decision making process. Therefore, where Council found appellant chartered accountant to be guilty of professional misconduct, however, recommendations made by Council were not supported by independent reasons and High Court had accepted recommendations of Council without applying its own logic to this aspect of matter, matter was to be remanded to Council to reconsider matter afresh after granting appellant an opportunity of being heard. Matter remanded**.**

D. K. Agrawal v. Council of the ICAI (2022) 284 Taxman 1 (SC)

Civil Procedure Code, 1908,
S.96 : Appeal from original decree-Appeal-Commissioner (Appeals)-Duties-First appeal is a valuable right-Appellate authority is required to address itself to all issues and decide the appeal assigning valid reasons. [ITAct, S. 250, 251]

The Court held that first appeal is a valuable right of the appellant and therein all questions of fact and law are open for consideration by reappreciating material and evidence. Therefore first appellate Court is required to address itself to all issues and decide appeal assigning valid reasons either in support or against by reapprasial.
Court of appeal must record its finding dealing with all issues, considering oral as well as documentary evidence led by parties. (CA No. 4639 of 2022 dt 5 th July 2022.)

Ramnath Exports Pvt Ltd v. Vinita Mehta and Ors (2022) 7SCC 678

Order III Recognised agents and pleaders-Appearances Advocates-Concession by Counsel-Concession by counsel contrary to law-Not binding on parties [Advocates Act, 1961, S. 2(a)]

Held that the concession if any by counsel which is contrary to the law shall not be binding on parties.

UOI v. Manraj Enterprises (2022) 2 SCC 331

Coimbatore City Municipal Corporation Act, 1981

S. 123(e): Municipal Property Tax-Exemption-Hospital-Hospital run by Society-Objects of society was not purely charitable-Exemption from Income-tax Act, 1961 was not granted-Hospital not exempt from Municipal Property Tax.[ITAct, 1961, S. 11, 12,12A, Companies Act, 2013, S. 135].

Under the Coimbatore City Municipal Corporation Act, 1981 lands and buildings of charitable hospitals and dispensaries are exempted from payment of property tax. The assessee claimed exemption under the Act in respect of hospital run by it which was denied. On writ dismissing the petition, the Court held that the expression "charitable hospitals and dispensaries" had not been defined in the enactment. The word "charity" means relief to poor. The exemption under the Income-tax Act, 1961 is confined to hospitals existing solely for philanthropic purposes and not for the purpose of profit and which is wholly or substantially financed by the Government. Where a society or body is making systematic profits, even though a portion of the profits is utilised only for charitable purposes, it cannot be said that it could claim exemption. Under section 135 of the Companies Act, 2013 and the provisions of Companies Act, 1956, companies enjoying the profits were/are required to contribute for public cause as corporate social responsibility. The amount that has to be spent towards corporate social responsibility is out of profits. However, that does not make such company a "charitable institution". A reading of the objects of the society indicated that the object of the hospital was not purely charitable in nature. The fact that the memorandum of the society itself authorised collection of charges from the persons receiving treatment in hospital, nursing school and work rooms indicated that the assessee's object was not a charitable hospital. The records filed before the court did not indicate that the assessee had obtained a section 12A certificate from the Commissioner under the provisions of the Income-tax Act, 1961. There were no records to show that even the Income-tax Department had allowed exemption under section 11 of the Act, to the assessee. The assessee's claim for exemption under section 123(e) of the Coimbatore City Municipal Corporation Act, 1981 was not justified.

Institute of Franciscan Missionaries of Mary v.Coimbatore City Municipal Corporation (2022)445 ITR 152 (Mad)(HC)

Companies Act, 2013.

S. 230 : Composite scheme of arrangement-Demerger-Revenue objected on the ground that the scheme was a tool to avoid and evade taxes-NCLT and NCLAT clarified that Revenue was entitled to take out appropriate proceedings for recovery of any tax statutorily due from the transferor or transferee company or any other liable person-Order of NCLT and NCALT could not interfered with [S. 231, 232]

A composite scheme of arrangement between petitioner companies was approved by NCLT. The Revenue opposed said scheme on grounds that conversion of preference shares into the loan would substantially reduce the profitability of the demerged company, which would act as a tool to avoid and evade taxes. NCLT clarified that the Revenue would be free to examine the aspect of any tax payable as a result of the sanction of the scheme and in case it is found that the scheme of arrangement ultimately results in tax avoidance or is not in accordance with the demerger provisions of the Income-tax Act, 1961, then they would be at liberty to initiate appropriate course of action as per law. It was further clarified by the NCLT that any sanction to the scheme of arrangement under sections 230 to 232 of the Companies Act, 2013 would not adversely affect the rights of the Revenue or any past, present or future proceedings. These clarifications were reiterated by NCLAT.

On appeal before Supreme Court, the Revenue submitted that impugned orders and/or sanction of Scheme might come in their way while framing the assessment and to that extent, interest of revenue would be affected. The Supreme Court held that the NCLT as well as the NCLAT had already clarified that the Revenue would be entitled to take out appropriate proceedings for recovery of any tax statutorily due from transferor or transferee company or any other person who was liable for payment of such tax due. Therefore, dismissing the Revenue's appeal, it held that the impugned judgment and orders passed by NCLAT as well as NCLT approving scheme could not have been interfered with.

JCIT v. Reliance Jio Infocomm Ltd. (2022) 219 DTR 61 / 329 CTR 228 (SC)

Constitution of India

Art. 14 : Discrimination-Salary-Income-Tax department-State as an employer-Equal pay for equal work-Peons and watchmen-Difference in wages between those engaged prior to 2013 and those engaged later-Not justified. [Art, 16, 39]

The respondents were engaged by the Department directly as daily wagers, but, they were not being paid the minimum wages. Those daily wagers, who were engaged prior to the year 2013, were being paid minimum wages and were getting an amount of Rs.16,300 per month, whereas, the respondents, who were engaged by the Department directly, were getting approximately Rs. 7,000 per month, less than the minimum wages. The Directorate of Income-tax, New Delhi issued instructions dated October 23, 2018, whereby, Office Order dated May 13, 2013 was withdrawn and all Chief Commissioners of Income-tax/Directors General of Income-tax were directed to ensure compliance with the order dated October 23, 2018 immediately. In view of the instructions dated October 23, 2018, the Department started to engage the respondents through outsourcing ignoring the fact that the respondents were directly engaged by the Department as casual workers. The respondents, who were engaged by the Department directly, were not being paid minimum wages, whereas, similarly situated

casual workers were being paid the minimum wages. On writ petitions, the single judge observed that the petitioners were engaged in 2013 and some casual workers were engaged prior to 2013 directly by the Department, and therefore, merely on the ground that the petitioners were engaged in 2013, the criteria of payment of minimum wages could not be changed. The single judge disposed of the three writ petitions with a direction to the respondents to continue the petitioners as casual workers in the Department as they were directly engaged by the Department and they should be paid minimum wages as were being paid to similarly engaged daily wagers who were engaged prior to 2013. On appeal : dismissing the appeal, that in view of the law laid down by the Supreme Court, the single judge had not erred in passing the judgment. Followed State of Punjab v. Jagjit singh [2017] 1 SCC 148,

PCIT. v. Pankaj Singh Brijwal (2022) 441 ITR 713 (Uttarakhand) (HC)
PCIT v. Narendra Singh Bisht (2022) 441 ITR 713 (Uttarakhand) (HC)

PCIT v. Amar Ram (2022) 441 ITR 713 (Uttarakhand) (HC)

Art:16 : Equality of opportunity in matters of public employment-Service matters-Certain principles of policy to be followed by the State-Pay Scale-Equal pay-Minimum wages-Casual workers for his employment under administrative control of PCIT as peon/watchman from 2013-Entitled to be paid minimum wages paid to salary equal to such daily wages paid to casual workers who were engaged prior to 2013 by department.[Art, 14, 16(1) 39(d), 226]
Respondent was engaged as peon/watchman under administrative control of PCIT in 2013. CBDT vide instruction to all Chief Commissioner had declared Group D, to which respondent belonged, as a dying cadre and subsequently, work post of peon and watchman were being taken by casual workers through outsourcing agency. Respondent filed a writ petition seeking equal pay and minimum wages on plea that respondent was discharging his duty but was not being paid minimum wages, whereas, similarly situated persons who were engaged directly by Department prior to 2013 were being paid minimum wages. Singe judge allowed the petition. On appeal division bench of High Court up held the order of single judge and held that since respondent was similarly situated as casual workers for his employment, he was entitled to be paid minimum wages/salary equal to those employees who were working as daily wages casual workers in Department.
PCIT v. Pankaj Singh Brijwal (2022) 142 taxmann.com (Uttarakhand (HC)
Editorial : SLP of Revenue dismissed, PCIT v. Pankaj Singh Brijwal (2022) 288 Taxman 643 (SC)

Art. 136:.Special Leave to appeal by the Supreme Court-Harassment by Department-Unnecessary SLP-Respondent suffering from Cancer-Cost of Rs 1,00,000 was imposed on the Officer to be recovered from his salary.

The Department filed an SLP against an order granting bail to the respondent on account of malignancy and cancer. It was held that the department ought not have filed such an appeal wasting the stationary, legal fees and courts time. Cost of Rs. 1,00,000/-imposed on the officer to be recovered from his salary. (SLP (Crl) No. 6755 of 2022 dated October 20, 2022)

ADDE v. Kamal Ahsan www.itatonline.org (SC)

Art : 141 : Limitation-Covid-19-Extension of periods-Initial order passed by Supreme Court restored-Period from 15-3-2020 till 28-2-2022 excluded for purposes of limitation prescribed under any General or special laws in respect of all judicial or quasi-judicial proceedings-Further clarification given [Art. 142, Arbitration and Conciliation Act, 1996, S. 23(4),29A, Commercial Courts Act, 2015 S. 12A, Negotiable Instruments Act, 1881, S. 38, any other laws, Courts or Tribunal]

Honourable Supreme Court held that due to the outbreak of the covid-19 pandemic in March, 2020, the Supreme Court took suo motu cognizance of the difficulties that might be faced by litigants in filing petitions or applications or suits or appeals or all other proceedings within the period of limitation prescribed and directed extension of the period of limitation in all proceedings with effect from March 15, 2020 till further orders. Further orders were passed on March 8, 2021, April 27, 2021 and September 23, 2021. On an application, the Supreme Court passed further orders considering the impact of the surge of the virus on public health and adversities faced by litigants in the prevailing conditions directing : (i) that the order dated March 23, 2020 was to be restored and the period from March 15, 2020 till February 28, 2022 was to be excluded for the purposes of limitation as might be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings; (ii) consequently, the balance period of limitation remaining as on October 3, 2021, if any, was to become available with effect from March 1, 2022; (iii) in cases where the limitation would have expired during the period between March 15, 2020 till February 28, 2022 notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from March 1, 2022. In the event the actual balance period of limitation remaining, with effect from March 1, 2022 was greater than 90 days, that longer period to apply; (iv) that the period from March 15, 2020 till February 28, 2022 also to be excluded in computing the periods prescribed under sections 23(4) and 29A of the Arbitration and Conciliation Act, 1996, section 12A of the Commercial Courts Act, 2015 and provisos (b) and (c) of section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe periods of limitation for instituting proceedings, outer limits (within which the court or Tribunal could condone delay) and termination of proceedings. Referred Cognizance For Extension of Limitation, In Re (2020)424 ITR 314 (SC), Cognizance For Extension of Limitation, In Re (2020)432 ITR 206 (SC), Cognizance For Extension of Limitation, In Re (2021) 226 Comp Cas 127 (SC), Extension of Limitation, In Re (2021) 438 ITR 296 (SC)

Cognizance For Extension of Limitation, In Re (2022)441 ITR 722 (SC)

Art. 141 :Law declared by Supreme Court to be binding on all courts-Interpretation-Two conflicting judgements of Supreme Court-The High Courts must follow the judgement which appears it to lay down the law more elaborately. [Land Acquisition Act, 1894, S 53]

The court ruled that when two conflicting judgements of the Supreme Court were there then on principle the High Courts must follow the judgement which appears it to lay down the law more elaborately. Thus the weight of two matching and conflicting judgements inevitably must be considered by the rationale and logic thereof and not by the mere fortuitous

circumstances of the time and date on which they were rendered. The theory of pre-eminence of a judgment by virtue of its time and being the latest alone was thus concussively laid rest.

Swiss Time Ltd v. Umrao AIR 1981 Punjab and Haryana 213 (FB).

Art. 141 : Precedent-Judgement of Supreme Court-Cannot be construed as statute-Decision of Court should be understood by taking into account factual context in mind.

The judgement of the Supreme Court cannot be construed as a statute. Blind reliance on a judgement without considering the fact situation of the case in bad. It is equally settled that a singular different fact may change the precedential value of a case. It is equally understood that that decision of court should be understood by taking into account the factual context in mind.

Indian Agro Food Ltd v. State Bank of India AIR 2022 MP 1

Maharashtra Value Added Tax, 2002 (MVAT) –Central Sales Tax Act, 1956 (CST)

S. 23 : Assessment-Order passed without giving an opportunity of personal hearing-High Court quashed the Assessment order-On appeal the Supreme Court held that, when an alternative remedy of filing an appeal is available under the Act, High Court

should not have entertained the writ petition-Order of High Court is set aside [S. 23(2), Sales Tax Act, 1856, S. 9(2), Art, 226, 227]

The personal hearing was fixed on a particular day. The AO was not available and therefore no hearing took place. Multiple telephone calls were made to the AO for personal hearing but no such hearing was materialized.The AO passed the order determining the tax liability along with interest and penalty under the MVAT and CST Act. The respondent filed writ petition challenging the order on the ground that the order was beyond the period of limitation. High Court entertained the writ petition and quashed the assessment order and the demand notice. On appeal the Supreme Court held that when the statutory remedy is available High Court has seriously erred in entertaining the writ petition under Article 226 of the Constitution of India against the assessment order by passing the statutory remedies. Court also observed that when there is an alternative remedy is available, judicial prudence demands that the court refrains from exercising its jurisdiction under constitutional provisions. Accordingly the order of High Court was set aside and directed to prefer appeal remedy with in four weeks. Referred United Bank of India v. Satyawati Tondon and Ors (2010) 8SCC 110, (CA No. 4956 of 2022 dt 20-9-2022)

State of Maharashtra and Ors v. Greatship (India) Ltd (SC) www.itatonline.org

The Prohibition of Benami Property Transactions Act, 1988 (As amended by the Benami Transactions (Prohibition) Amendment Act, 2016

S.2(9): Benami Property Transactions-Amendment of Act in 2016 Provisions are substantive-Not applicable with retrospective effect-Every litigant has a vested right in substantive law, but no such right exists in procedural law- Interpretation of taxing statutes-Rule against retrospectivity.[S. 2(9)(A) (2(9)(C), Art, 20, 226]

Court held that Section 1 of the Benami Transactions (Prohibition) Amendment Act says that the Amendment Act of 2016 shall come into force on such date as the Central Government may, by notification in the Official Gazette appoint and different dates may be appointed for different provisions and any reference in any such provision to the commencement of the Amendment Act of 2016 shall be construed as a reference to coming into force of that provision. The Central Government, in exercise of the powers conferred by sub-section (2) of section 1, issued notification dated October 25, 2016 ([2017] 390 ITR (St.) 120) appointing the first day of November, 2016 as the date on which provisions of the Amendment Act of 2016 shall come into force. There is no notification of the Central Government to the effect

that provisions of section 2(9) of the Amendment Act of 2016 shall have effect from an anterior date.
Section 2(9)(A) and (C) are substantive provisions creating the offence of benami transaction. These two provisions are significantly and substantially wider than the definition of benami transaction under section 2(a) of the unamended 1988 Act. Therefore, section 2(9)(A) and (C) can only have effect prospectively. The Central Government has notified the date of coming into force of the Amendment Act of 2016 as November 1, 2016. Therefore, these two provisions cannot be applied to a transaction which took place prior to November 1, 2016. It is a cardinal principle of construction that every statute is prima facie prospective unless it is expressly or by necessary implication made to have retrospective operation.Substantive law is that part of the law that creates, defines and regulates the rights, duties and powers of parties. On the other hand, procedural law would cover the rules and prescribe the steps for having a right or duty judicially enforced, as opposed to the law that defines the specific rights or duties. Every litigant has a vested right in substantive law, but no such right exists in procedural law.

Nexus Feeds Ltd v. ACIT (2022) 444 ITR 261 (Telangana) (HC)

S. 2(9): Benami transactions-Transactions or arrangements-Failure to produce documents to prove income-Property purchased in the name of wife-Sale agreement is valid.[S. 2(9)(A)(b)(iii)]
Respondent no. 1 filed a title suit claiming that he had purchased suit property from respondent no. 2 for certain consideration vide an agreement of sale. Appellant, husband of respondent no. 2, however, claimed that suit property was purchased by him from his earning benami for respondent no. 2 (wife). Appellant however failed to file any supporting documents to indicate either his ownership over disputed property or his individual income. Court held that in absence of any documentary evidence, mere statement of appellant that he was purchaser of property could not be treated as gospel truth, neither could property be said to be benami. Order of Trail Court affirmed.
Ashok Kumar Subba v. Bomal Kumar Jain (2022) 287 Taxman 240 / 113 CCH 331 (Sikkim)(HC)

S. 2(9)):Benami Transaction-Property purchased in the name of wife before decree in suit-Attachment of property is held to be not valid.[S. 2(5)]

Appellant obtained a decree against defendant. Appellant impleaded wife of defendant and sought to attach properties standing in name of wife of defendant. Court held that question of benami transaction did not arise in this case, in view of fact that property stood in name of wife and benami transaction and nature of purchase were not established except by stating that first respondent wife had no independent sources of income. Mere fact that property purchased in name of wife from and out of sources of income from husband, would not construe that said purchase fell under provisions of Benami Act. When property was purchased before decree and it was brought to notice of Court that before promissory note which was basis for decree in original suit, then, there was no reason to arrive a conclusion

that property fell under provisions of Benami Transaction (Prohibition) Act and liable to be attached in order to realise decree amount.

Ambula Ammal v. Anbumani (2022) 285 Taxman 27 (Mad.) (HC)

S.3: Prohibition of benami transactions-Change of law-Rule against retrospectivity-Amendments brought in 2016 introducing expanded definition of "Benami Property" to include proceeds from property held benami, element of Mens Rea and punitive forfeiture in Rem-Amendments brought in 2016 not merely procedural but substantive to have effect only prospectively-Prosecution or confiscation proceedings under amended provisions for transactions entered into prior to coming into force of 2016 amendment act not sustainable-Legislative powers-Validity of provision-Doctrine of manifest arbitrariness-The court left the question of the constitutionality of independent forfeiture proceedings contemplated under the 2016 Amendment Act on other grounds, open to be adjudicated in appropriate proceedings.[S. 2, 3, 4, 5, 24, 27(3), 27(5), 53, 54, 54A, 67 Art, 14, 20(1)]

Court held that the amendments to the Prohibition of Benami Property Transactions Act, 1988 brought by the Benami Transactions (Prohibition) Amendment Act, 2016 do not have retrospective effect.

Mens rea is an essential ingredient of a criminal offence. The mere fact that the object of the statute is to promote welfare activities or to eradicate a grave social evil which by itself is not decisive of the question whether the element of a guilty mind is excluded from the ingredients of an offence. Mens rea by necessary implication may be excluded from a statute only where it is absolutely clear that implementation of the object of the statute would otherwise be defeated.

Section 2(a) of the unamended 1988 Act which defines benami transactions included only tripartite benami transactions, while bipartite transactions, were left out of the definition. Reading the definition to include sham or bipartite arrangements within the ambit would be against the strict reading of criminal law and would amount to judicial overreach. The definition does not capture the essence of benami transactions as the broad formulation includes certain types of legitimate transactions as well. The transferee or property holder's lack of beneficial interest in the property was a vital ingredient, as settled by years of judicial pronouncements and common parlance, but found to be completely absent in the definition given in the Act. Section 2(c) of the 1988 Act defines property as inclusive of all kinds of property and includes various rights and interests. The broad formulation of property was for the first time introduced only in 1988 and was never contemplated earlier. Section 3 puts forth a prohibitive provision intending to criminalise an act of entering into a benami transaction. Section 5 which dealt with acquisition of property held benami was never utilised as it was felt that there was requirement of additional statutory backing to make the law effective.Reading section 2(a) with section 3 of the unamended Act makes one thing clear-the criminal provision envisaged under these provisions does not expressly contemplate mens rea. It completely ignores the aspect of mens rea, as it intends to criminalise the very act of one person paying consideration for acquisition of property for another person. The inference is that the 1988 law was envisaged on the touchstone of strict liability. Such strict statutory formulation under section 2(a) read with section 3 left loose ends in the 1988 Act. In this light, the prosecution would only have to prove only that consideration was paid or consideration was provided by one person for another person and nothing more. The courts have had occasion to examine this legislation on the civil side but never on the criminal side,

which would bear higher standards. The ingredients under section 3(1) and 3(2) cannot be conflated with those of section 4, to forcefully imply mens rea. Thus the unamended 1988 Act tried to create a strict liability offence and allowed separate acquisition of benami property.
When the court is called upon to answer whether the provisions of the Act as amended by the Benami Transactions (Prohibition) Amendment Act, 2016 are attracted to transactions that have taken place before 2016, the assumption in favour of constitutionality cannot be made.
Section 3(2) of the unamended Act is unconstitutional for being manifestly arbitrary. Accordingly, section 3(2) of the Act as amended in 2016 is also unconstitutional as it is violative of article 20(1) of the Constitution.
In rem forfeiture provision under section 5 of the unamended Act of 1988, prior to the 2016 Amendment Act, was unconstitutional for being manifestly arbitrary.
The 2016 Amendment Act was not merely procedural, rather, prescribed substantive provisions.
The in rem forfeiture provision under section 5 of the Act as amended in 2016, being punitive in nature, can only be applied prospectively and not retroactively.
The authorities cannot initiate or continue criminal prosecution or confiscation proceedings for transactions entered into prior to the coming into force of the Act as amended in 2016, viz., October 25, 2016. As a consequence, all such prosecutions or confiscation proceedings shall stand quashed.The court left the question of the constitutionality of independent forfeiture proceedings contemplated under the 2016 Amendment Act on other grounds, open to be adjudicated in appropriate proceedings.

UOI v. Ganpati Dealcom Pvt. Ltd. (2022)447 ITR 108 / 289 Taxman 177 (SC)

S. 3: Prohibition of benami transactions-Son cannot claim share in property allegedly purchased by his deceased father benami in his mother's name as Benami Act presumes that any property purchased in name of one's wife is for her benefit.

Plaintiff claimed share properties standing in his mother's name as purchased by his deceased father in his mother's name and that his mother was only benamidar. Court held that in view of Prohibition of Benami Property Transaction Prohibition Act, 1988 plea was not available since section 3 thereof casts presumption that any property purchased in name of one's wife is presumed to be for her benefit.

Ambethraj v. Gowthaman (2022) 285 Taxman 159 (Mad.)(HC)

S.5: Benami Transaction Limitation-Order passed within time limit-Delay in communication-Order not barred by limitation-Alternative remedy-Writ is not maintainable.[S.24(1),24(3), 24(5), 26(3), 26(7), 46, 114 Art, 226]
On appeal by the revenue against the order of single judge Advance Infradevelopers Pvt. Ltd. v. Adjudicating Authority (2022)442 ITR 477 (Mad) (HC). The Division Bench held that the single judge was not correct in entertaining the writ petition, when there was an efficacious appeal remedy under section 46 of the Prohibition of Benami Property Transaction Act. Court also held that even on the merits the order under section 26 had been passed on September 26/27/28, 2019 within the period as mentioned under sub-section (7) of section 26, which was duly recorded in the register maintained by the authority as “order is

passed accordingly". The time taken for preparation of certified copies of the order, after getting notarisation from the Administrative Officer-cum-Registrar, on September 4, 2019 and September 11, 2019 and being booked for despatch on September 12, 2019 and September 13, 2019 to the respondents, were only procedural lapses and could not be understood as postponing the date of making the orders validly passed by the adjudicating authority, so as to invalidate the order. This was not a single case, but a batch of 69 cases with each order running to hundreds of pages. The period of 15 days from the date of passing of the orders to the date of dispatch (which period was consumed for preparation of certified copies in triplicate), would certainly appear to be a reasonable period. The order passed under section 26 was not barred by limitation.

Adjudicating Authority v. Anuttam Academic Institutions (2022)442 ITR 509/ 286 Taxman 400 (Mad)(HC)
Editorial : Decision of single judge reversed; Advance Infradevelopers Pvt. Ltd. v. Adjudicating Authority (2022)442 ITR 477 (Mad) (HC) (SJ)

S. 24 : Notice and attachment of property-Benami transaction-Gold and cash belong to spouse-Beneficial owner-Provisional attachment is held to be permissible-Petitioner has to respond to notices with supporting evidences.[S. 24(4)(a)(i)]

Pursuant to a search conducted at the residence of petitioner items of gold and cash were found. The petitioner admitted that aforesaid cash and items of gold belonged to her. Consequently, the Initiating Officer passed order under section 24(4)(*a*)(*i*) implicating petitioner as a beneficial owner of the benami property and made provisional attachment. In writ, the petitioner challenged the impugned order passed under section 24 on ground that the provisions of Amendment Act, 2016 could not be enforced pertaining to the transaction alleged to be benami as same was entered into on 28-10-2016, much prior to coming into effect of said Amendment Act. Court held that since section 1(3) clarifies that provisions of Amendment Act other than sections 3, 5 and 8 shall be deemed to have come into force retrospectively on 19-5-1988, provisional attachment made under section 24 after amendment would be permissible under section 1(3) of the Act.For all purposes, it is only the commencement of proceedings under the Act and the petitioner has to respond to the show cause notice by submitting their explanations/objections along with the documents and evidences and thereafter, the authorities are bound to adjudicate the matter in the manner provided and take appropriate decision.

K.Nagarajan v. Adjudication Authority (2022) 284 Taxman 237 (Mad.)(HC)

S. 24: Attachment, adjudication and confiscation-Search and Seizure-Benami Transactions-Provisional Attachment of property-Order for continuation of provisional attachment till final order of adjudicating authority-Failure to provide opportunity of cross examination-Dismissal of writ petition-No statutory provision stipulating providing of cross-examination of w itnesses-No violation of Principles of natural justice-Writ petition dismissed-All contentions of appellants to be raised before adjudicating authority during proceedings [S.24(1), 24(4), 24(4)(a)(i), 26(3),IT Act, S. 132, Art. 226]

The single judge held that the enquiry contemplated at the stage of initial investigation was only preliminary based upon prima facie reasons and conclusions and directed the respondents to proceed in accordance with sections 25 and 26 of the 1988 Act forthwith and to afford opportunity to put forth all contentions before the Adjudicating Authority. On appeals dismissing the appeals, that in the notices issued under section 24(1) of the 1988 Act, the Deputy Commissioner had set out the reasons for forming an opinion that the appellant was a benamidar in respect of the properties in question and was called upon to show cause as to why the properties should not be treated as benami properties. Though the appellant had raised objections it had failed to produce the documents called for by the Commissioner to show that the alleged transactions were reversed subsequently. Instead it complained that there was no fair play on the part of the respondent authorities, while passing orders under section 24(4) of the 1988 Act. The proceedings under section 24 only required a recording of prima facie opinion as to the benami nature of the transaction. The appellant had failed to furnish the necessary documents to substantiate the contention that the alleged transactions were not benami transactions. After making enquiry and calling for reports or evidence and taking into account all the relevant materials the Commissioner with the prior approval of the approving authority had passed separate orders under section 24(4) of the 1988 Act for continuing the provisional attachment of the properties till the passing of the order by the Adjudicating Authority under section 26(3) of the 1988 Act, which were purely provisional in nature. That apart, the provisions of law mandated the respondent authorities to furnish such documents, particulars or evidence and provide an opportunity of being heard to the appellant only at the stage of adjudication proceedings and there was no provision under the 1988 Act to provide an opportunity to the appellants to cross examine the witnesses at the preliminary stage. In the absence of any provision of law and the compelling circumstances warranting the respondent authorities to provide an opportunity of cross-examination of witnesses, whose statements had been relied on by the respondent authorities, to the appellants at the stage of section 24 proceedings, the plea raised by the appellant in that regard could not be countenanced. Therefore, there was no error in the orders passed by the Commissioner. The appellant had not made out any case to interfere with the orders under section 24(4) of the 1988 Act and the orders dismissing the writ petitions at this stage.

Marg Projects and Infrastructure Ltd. v Dy. CIT (Benami Prohibition) (2022)448 ITR 649 (Mad) (HC)
Marg Capital Markets Ltd v Dy. CIT (Benami Prohibition) (2022)448 ITR 649 (Mad) (HC)

Venus Meridian Agencies Pvt Ltd v Dy. CIT (Benami Prohibition) (2022)448 ITR 649 (Mad) (HC)

Global Infoserv Ltd v Dy. CIT (Benami Prohibition) (2022)448 ITR 649 (Mad) (HC)

Marg Realities Ltd v Dy. CIT (Benami Prohibition) (2022)448 ITR 649 (Mad) (HC)
Editorial : Decision of single judge in Marg Realities Ltd v Dy. CIT (Benami Prohibition) 448 ITR 574 (Mad)(HC) affirmed.

S. 32 :Qualification for appointment of chairperson and Members of Appellate Tribunal-Constitution Of Appellate Tribunal-Independence of Judiciary-Qualification of Judicial Member-Requirement that he could be a Member of Indian Legal Service or one had held post of additional Secretary or equivalent post in that service-Provision not valid. [Art, 226]
The petition was filed challenging the section 32(2)(a) of the Prohibition of Benami Property Transactions Act, 1988. As regards the qualification for appointment of as a judicial Member of the Appellate Tribunal. Allowing the petition the Court held that The extent of judicial review that can be exercised in a given case is limited. Though a constitutional court can declare a provision to be unconstitutional, it should not give any direction to the Legislature to make an amendment in a particular way. However, in a case where a direction has been given by the Supreme Court to have the judicial independence, it is required to be followed by the High Courts as well as the Executive. In view of this position section 32(2)(a) of the Prohibition of Benami Property Transactions Act, 1988 is unconstitutional because it postulates that a Member of the Indian Legal Service who has held the post of Additional Secretary or equivalent post in that service is eligible for appointment as a Judicial Member in the Appellate Tribunal. Referred Indira Nehru Gandhi v. Raj Narain [1975] Supp SCC 1, UOI v. R. Gandhi, President, Madras Bar Association (2010) 156 Comp Cas 392 (SC), Sampat Kumar (S.P) v. UOI (1987) 1 SCC 124

V. Vasanthakumar v. UOI (2022) 444 ITR 677 (Mad)(HC

S. 49 : Appeal-High Court-Second appeal-Substantial question of law-Order passed without framing substantial question of law-Order of High Court quashed and set aside.[ITACT, S. 260A, Code of Civil Procedure, 1908, S.100]

Court held that when High Court is deciding second appeal under section 100 of CPC, High Court has to first frame substantial questions of law, if any, and thereafter to answer those substantial questions of law. Where no substantial questions of law at all had been framed by High Court and without framing substantial question of law, High Court had set aside concurrent findings recorded by both Courts and order passed by High Court was set aside.
Govind v. Pandurang (2022) 287 Taxman 188/(2021)) 112 CCH 535 (SC)

S. 49 : Appeal-High Court-Memorandum of appeal-Substantial question of law-No substantial question of law had been raised even before Supreme Court, Special Leave Petition against High Court's judgment was to be dismissed [ITACT, S. 260A, Code of Civil Procedure, 1908, S.100]

Held where no substantial question of law had been raised even before Supreme Court, Special Leave Petition against High Court's judgment was to be dismissed..

Lechhmina v. Gulab Singh (2022) 287 Taxman 106 /113 CCH 263 (SC)

Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019-Chapter V of the Finance Act, 2019-Amnesty Scheme.

Clause 126: Verification by designated committee-Failure to deposit the tax with in stipulated time-Rejection of application is held to be justified [Clause, 127, 129, Art. 226]

Petitioner could not deposit the tax due to pandemic arising out of COVID-19. Designated Authority rejected the application. On writthe Court held that writ court has no competence to add to or alter the terms of the scheme to enable the party, which had sought to avail the benefits of the scheme, to deposit the determined amount beyond the period as fixed by the respondent.Relied on UOI v. Charak Pharmaceuticals (India) Ltd. (2003)154 E.L.T. 354 (SC)

National Construction Company v. The Designated Committee under Sabka Vishwas Legacy Disputes Resolution Scheme, 2019(2022) 326 CTR 799/ 213 DTR 423 (Bom)(HC)

Service Tax, Finance Act, 1994.(1994) 207 ITR 53 (St) (91)

S. 74: Rectification of mistake –Precedent-Decision rendered by the Tribunal for assessee's own case is binding on the Commissioner (Appeals)-Failure to consider the decision is mistake apparent on record.[Art, 226]

Allowing the petition the Court held that decision rendered by Tribunal in assesee's case for an earlier period on a particular issue is binding upon Commissioner (Appeals) and subordinate authorities in their own case for subsequent periods involving same issue particularly when such decision of Tribunal has became final. Followed Honda Siel Power Products Ltd v. CIT (2007) 295 ITR 466 (SC)/(2008) (221) E.L.T 11 (SC)/ (WP.No. 6830 of 2021 dt. 28-9 2021)

Koluthra Exports Ltd v. UOI 2022 (57) G.S. T.L 112 (Ker) (HC)

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Circular No.6 of 2022 dated 17 th March, 2022-Condonation of delay under section 119(2)(b) of the Income-tax Act, 1961 in filing of Form 10-IC for the assessment year 2020-21-reg. (2022) 442 ITR 191 (St)

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