



DIRECT TAXES DIGEST- YEAR 2009 (JANUARY – DECEMBER 2009) (FROM 11 REPORTS)

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(REPORTS): ITR, CTR, Taxman, BCAJ, Tax World, DTR, SOT, ITD, Taxation, TLR and www.itatonline.org.

SUBJECTS	SECTIONS	ISSUES	NAME OF CASE	CITATION
ACCOUNTS – BEST JUDGEMENT- REJECTION OF BOOKS OF ACCOUNT	143 r.w.s. 145	Additions made for under statement of sales, by comparing sale prices of sales made to co-operative societies, which was merely 5% of total sales, with that of sales to other individuals, on inference that they were at a lower price, without bringing any material on record or examining the individuals was held to be unjustified, and additions made on account of suppressed sales was deleted.	Rabindranath Seal	(2009) 180 Taxman 104 (Kolkatta)
ACCOUNTS – BEST JUDGEMNT- REJECTION OF BOOKS OF ACCOUNT	145	Without pointing out any specific defect in the method of accounting regularly employed by the assessee, the books of account could not be rejected.	Shiv Agrevo Ltd	(2009) 123 TTJ 416 (JP).
ACCOUNTS – METHOD	145 (2)	Assessee developer having regularly employed project completion method which is an accepted method of accounting, and the central government having not notified AS-7 u/s. 145(2), AO could not reject the accounts u/s. 145(3) on the ground that the assessee had not followed the percentage completion method.	Prestige Estate Projects (P) Ltd.	(2010) 33 DTR 514 (Bang)(Trib)
ACCOUNTS – BEST JUDGEMENT- REJECTION OF BOOKS OF ACCOUNT.	144, 145	Once the authorities had come to the conclusion that the books of account were not properly maintained and suffered from deficiencies, the AO was justified in computing income on a reasonable basis in an appropriate manner.	National Plastics Inds.	(2009) 309 ITR 191 (Bom)
ACCOUNTS - CHANGE OF METHOD	5,145,	There being a genuine difficulties compelling assessee to change over from mercantile to cash system of accounting as regards to interest income, the change was bonafide .	Coromandal Investment (P) Ltd	(2009) 316 ITR 104 225 CTR 313 (Guj).
ACCOUNTS – CLOSING STOCK- RECTIFICATION OF MISTAKE.	145, 154	Closing stock of earlier year has to be treated as opening stock of current year and therefore where the opening stock of current year shows a lower value than the value of closing stock of earlier year as finally determined by the AO, the same is amenable to rectification under s. 154.	V.K.J. Builders & Contractors (P) Ltd.	(2010) 228 CTR 143 (2009)184 Taxman 357. (2009) 318 ITR 204.(SC)
ACCOUNTS – INVESTMENT OR STOCK-IN-TRADE	145	The Assessee holding shares both as investment and stock in trade. Method of valuation of stock was one consistently followed and sane has to be accepted.	Pal Enterprises Pvt. Ltd.	ITA Nos. 1994/Mum/2005, Bench – ‘H’, A.Y. 01–02, dt. 20-10-2008 BCAJ p. 518, Vol. 40-B, Part 4, January 2009.
ACCOUNTS – METHOD.	145	The Assessee is having more than one source of income under the head ‘Business income’. Held	Mehul J. Somaiya	ITA No. 7118 /Mum /2007, Bench – B, A. Y.



		that the Assessee has option to follow different methods of accounting in respect of each of different sources of income under the head.		2002-03, dt. 10-12-2008 – BCAJ p. 670, Vol. 40-B, Part 5, February 2009.
ACCOUNTS – VALUATION – GOVERNMENT SECURITIES	28(i), 145.	Assessee is entitled to change the method of valuation of government securities to market value from cost and claim depreciation on the difference in the diminution of value.	Karur Vysya Bank Ltd.	(2010) 33 DTR 244 (Mad).
ACCOUNTS – VALUATION OF STOCK	145	Valuation of slow moving and obsolete items of stock at 10 per cent of the cost was held to be justified especially when some the stock was sold in the subsequent year at 8.43 per cent of the cost.	Wolkem India Ltd.	(2009) 315 ITR 211 18 DTR 190 221 CTR 767 (Raj)
ACCOUNTS.BEST JUDGEMNT - REJECTION OF BOOKS– FALL IN SALES	133A, 145(3)	Assessee having shown better profit percentage, mere fall in sales without any material to show sale outside the book does not warrant rejection of accounts.	Ravi Agricultural Industries	(2009) 121 TTJ 903 117 ITD 338 (Agra) (TM)
ACCOUNTS-METHOD OF ACCOUNTING	145	The AO cannot adopt two methods of accounting, in one and the same project, to determine the income of the assessee. In the case of the assessee following project completion method, and where the road TDR was directly related to the said project the sale proceeds against the TDR were to be recognized as a revenue receipt in the year in which the project was completed and cannot be taxed in the year of sale of TDR.	Chembur Trading Corporation	ITA No. 2593/Mum/2006, AY 2000-01, dt. 21-1-2009 BCAJ pg. 32, Vol. 41A, Part 5, August, 2009.
ACCOUNTS-METHOD OF ACCOUNTING	145	FIFO Method changed to average cost method on account of practical difficulties faced by assessee it was held that it was a reasonable ground for changing method of accounting.	H.P. State Civil Supplies Corpn. Ltd.	(2009) 309 ITR 102 (HP)
ACCOUNTS-METHOD OF ACCOUNTING – VALUATION OF STOCK	145A	To give effect to s. 145A, if there is any change in the closing stock at the end of the year then there must necessarily be a corresponding adjustment made in the opening stock of that year. This does not amount to giving double benefit to the assessee and would be necessary to compute the true and correct profit for the purpose of assessment. Note: CIT vs. Mahavir Alluminium Ltd (2008) 297 ITR 77 (Delhi) followed. See Also: Hawkins Cookers vs. ITO (ITAT Mumbai)(2008) 14 DTR 206	Mahalaxmi Glass Works (P) Ltd	(2009) 318 ITR 116 (Bom). www.itatonline.org
ACCOUNTS-REJECTION OF ACCOUNTS – METHOD OF ACCOUNTING	145	Additions made by rejecting the Books of Accounts, by alleging imagined manipulation without proving the same or without verifying the material available through field enquiry, and only based on own judgment, was held to be not justified.	Ram Manohar Singh	(2009) 178 Taxman 47 (Jabalpur)
ACCRUAL OF INCOME - COMPENSATION FOR TERMINATION OF AGREEMENT-	4, 5, 28(ii)	When agreement itself got terminated there could be no other completion except completion as a result of termination of agreement and to that extent income is liable to tax, on due / on accrual	Kailash Nath & Associates	(2009) 121 ITD 563 (Delhi)(SB).



PROJECT COMPLETION METHOD.		basis.		
ACCRUAL OF INCOME – INTEREST	5	Accrued interest which was receivable by the assessee only after the end of the previous year cannot be assessed to tax in the current year even though the assessee is following mercantile system of accounting.	FAL Industries Ltd.	(2009) 17 DTR 308 (Mad)
ACCRUAL OF INCOME - SALES TAX REFUND	4, 41(1)	Once an order of refund of sales tax has been passed, the same has to be treated as income notwithstanding pendency of appeal against refund order.	Beirsdorf (India) Ltd. & Anr	(2009) 28 DTR 188 183 Taxman 178 (Bom)
ADVANCE TAX – INTEREST - COMPANY - BOOK PROFIT - MAT	115JA, 234B, 234C	Interest u/s. 234B and 234C, cannot be levied when book profit is computed u/s. 115JA.	Snowcem India Ltd.	(2009) 313 ITR 170 221 CTR 594 18 DTR 58 (Bom).
AGENT – NON-RESIDENT	163	The foreign company was in receipt of some income from the assessee, on account of sale of shares. The Act uses the words “from or through”, instead of the word ‘thorough’ in s. 163(1)(c). Any person in India from or through whom the non-resident is in receipt of any income directly or indirectly can be treated as agent of the non-resident.	Utkal Investments Ltd.	(2009) 120 TTJ 67 123 TTJ 286 (Mum)
AGRICULTURAL INCOME - CAPITAL GAINS - SALE OF SHADE TREES	2(1A),45	Sale proceeds of silver oak trees (shade trees) standing in the coffee estate is taxable as capital gains and not exempt as agricultural income.	C.Hanumantha Rao (Decd) & Anr	(2009) 25 DTR 108 (Mad).
ALTERNATE DISPUTE MECHANISM	144C	Parties are advised to resort to Alternate Dispute Resolution Mechanism suggested in s. 144C; competent authority is directed not to reject the application herein made by the assessee on the ground that the proposal has come before the cut-off date and to decide the matter notwithstanding the pendency of the appeal before the CIT(A).	HCL Technologies	(2009) 225 CTR 356 (SC).
AMORTISATION OF EXPENSES	35D	Fees paid to Registrar of Companies for increasing share capital falls within the ambit of S. 35D and allowable as deduction.	Fascel Ltd.	(2009) 120 TTJ 289 (Delhi)
AMOUNT NOT DEDUCTIBLE – CONSTITUTIONAL VALIDITY – NOT ULTRA VIRUS	40(a)(ia)	Whether discriminatory and violation of Article 14 of the Constitution of India – The impugned section excludes the right to seek permissible deduction in the event of failure to deduct or to deposit deducted tax, is not violative of Article 14. It rather relaxes the rigour if tax is deducted in subsequent year the benefit of deduction is allowable.	Rakesh Kumar & Co.	(2009) 224 CTR 510 178 Taxman 481 24 DTR 67 (P&H).
ANNUAL VALUE - DUPLEX FLAT – INCOME FROM HOUSE PROPERTY.	23	Annual value of a single duplex flat for self occupation to be taken as ‘nil’”, merely because the assessee had entered into two separate agreements jointly to purchase the duplex flat having two separate door numbers would not mean that the assessee had acquired two residential flats.	Suresh C. Sadarangani	(2009) 33 SOT 428 (Mum).
APPEAL - CIT(A)	250	Additional Ground challenging the assessment on	Madhu Patani	(2009) 18 DTR 110 (Ker).



POWERS		the ground of limitation can be raised first time before the CIT(A) in appeal against the fresh assessment order passed on remand, even though it was not raised either before the assessing authority or the CIT(A) in the first round of proceedings.		
APPEAL – TRIBUNAL –PRECEDENT-DECISION NOT RELIED BY THE PARTIES SHOULD NOT BE REFERRED – NATURAL JUSTICE	254(1)	If any decision not relied upon by the parties at the time of hearing and the Bench desirous to apply the ratio of such decision, the natural justice demands that the Bench should confront the parties with such decision, and should give an opportunity to them so that they can make their submissions with reference to such decision. Editorial Note.: See Lakhmini Mewal Das vs. ITO (1972) 84 ITR 649 (Cal).	Vindhya Telelink Ltd.	(2008) 15 DTR 238 119 TTJ 433 (Jab)(TM) (Trib)
APPEAL – APPEAL FEE - (TRIBUNAL) - NOT MAINTAINABLE	253(6)(d)	Appeal dismissed by CIT(A) as not maintainable hence such orders would fall within clause (d) of s. 253(6) and hence, appeal fee would be only Rs. 500/-.	A. Naresh Babu (Dr)	(2009) 24 DTR 41 123 TTJ 836 (Hyd) (Trib).
APPEAL - APPELLATE TRIBUNAL - PENALTY – FEES	253(6), 271(1)(c)	Imposition of penalty having no nexus with total income of assessee. Fee payable would be only Rs. 500/- and not on assessed income. Hon'ble High Court considered the special bench judgment in Bidyut Kumar Sett vs. ITO (2005) 272 ITR (AT) 75 (Kol.) Editorial Note:- All pending appeals before the Tribunal in respect of penalty if the assessee has paid the fees on assessed income can make the claim for refund at the time of hearing of appeal.	Ajith Kumar Pandey(Dr)	(2009) 310 ITR 195 21 DTR 103 223 CTR 96 (Patna)
APPEAL - APPELLATE TRIBUNAL – POWER OF ENHANCEMENT	254(1)	The Tribunal has no power enhancement and not empowered to take back the benefit granted to the assessee by AO. AO having granted depreciation in respect of 42,000 bottles leased out by the assessee, that benefit could not be withdrawn by the Tribunal.	Mcorp Global (P) Ltd.	(2009) 19 DTR 153 178 Taxman 347 222 CTR 110 309 ITR 434(SC).
APPEAL - APPELLATE TRIBUNAL – PRECEDENT	254(1)	Once the Tribunal comes to the conclusion that the fact situation in the case before it is identical to the one obtaining in an earlier matter decided by the Tribunal, it has no right or jurisdiction to record a decision entirely contrary to one reached by another Co-ordinate Bench on the same set of facts and circumstances.	Aceropolish Investments Ltd. & Ors.	(2009) 222 CTR 383 (Guj.)
APPEAL – APPROVAL OF COD	253	State Governments and PSUs do not need COD approval for filing an appeals in the Income tax matters.	Shivshahi Punarvasan Prkalp	www.itatonline.org
APPEAL – BLOCK ASSESSMENT	246A(1)(K), 253(1)(b)	Appeal against order of AO merely giving effect to the order of the Tribunal would lie only to the Tribunal and not CIT(A).	Paras Rice Mills	(2009) 18 DTR 149 (P&H)
APPEAL - CIT(A)	143(1)	It was held that the appeal against intimation u/s. 143(1) relating to the assessment for the A.Y. 1996-97 was maintainable.	Balmukund Acharya	(2009) 310 ITR 310 17 DTR 34 221 CTR 440



				176 Taxman 316. (Bom) www.itatonline.org
APPEAL - CIT(A) – POWERS – DIRECTION	150, 251	Appellate authority can give finding and directions only in respect of year / period which is before that authority and no direction or finding can be given in respect of other years. While annulling block assessment for the period 1 st April 1990 to 3 rd Nov., 2000, CIT(A) was not justified in directing the AO to reopen assessment for asst year 1999-2000.	Metal Factory (I) (P) Ltd	(2008) 15 DTR 274 (Chennai)(Trib)
APPEAL - CLEARANCE FROM COMMITTEE -HIGH COURT – MAINTAINABILITY -	260A	Appeal filed by the revenue against the assessee, a state owned corporation is dismissed as not maintainable for want of clearance from the Committee on disputes.	Tamilnadu Electricity Board	(2009) 223 CTR 389 15 DTR 222 (Mad.)
APPEAL – COMMISSIONER (APPEALS) - POWER OF STAY	251	While considering stay application, authority concerned should exercise his power judiciously and should pass order after applying his mind to various aspects of matter, but that would not confer jurisdiction upon authority concerned to sit tight and choose not to pass any order whatsoever on stay application. Court directed the Commissioner (Appeals) to hear stay application and dispose of same within a period of 15 days from date of order.	Smita Agarwal	(2009) 184 Taxman 59 26 DTR 333 (All)
APPEAL – CONDONATION OF DELAY	260A	Revenue failed to explain the inordinate delay in filing appeals – High Court has no power to extend the time-limit prescribed u/s. 260A which is absolute and even unextendable u/s. 5 of Limitation Act. Editorial- referred.CCEv Hongo India (P) Ltd (2009) 223 CTR 225 (sc)	Reliance Capital Ltd. & Ors. Mahavir Prasad Verma & Ors. Grasim Industries Ltd Mohd Farooq Shubhash Traders	(2009) 225 CTR 275 181 Taxamn 242 (Bom) (2009) 317 ITR 36, 225 CTR 305 20 DTR 105 (Chattisgarh) (2009)27 DTR 130 225 CTR 127 319 ITR 154 (Bom) (2009) 29DTR 241. 226 CTR 360 (All) (FB) (2009) 226 CTR 372 (MP).
APPEAL – CONDONATION OF DELAY OF 1045 DAYS	253(5)	Delay of 1045 days in filing appeals against revisional order of CIT directing AO to assess capital gains in Asst. Year 1997-98 condoned as the advice of Chartered Accountant not to file appeal in view of findings of CIT(A) that capital gains were chargeable to tax in asst. years 1998-99 to 2000-01 constituted sufficient cause.	Varanandhni Raghavan	(2008) 15 DTR 140 (Chennai)(Trib).
APPEAL – HIGH COURT	254(2), 260A, Art 226.	Appeal u/s. 260A is not maintainable against order of Tribunal u/s. 254(2) and therefore writ petition against order u/s. 254(2) cannot be rejected on the ground of availability of alter native remedy. Editorial.- see Bombay High Court Chem Amit vs. ACIT (2005) 272 ITR 397 (Bom)	Visvas Promoters (P) Ltd.	(2009) 30 DTR 65 226 CTR 638 (Mad).
APPEAL – HIGH COURT – COD	260A, 268A	The High Court had dismissed the writ petition of Delhi Development Authority on the ground that	Delhi Development Authority	(2009) 314 ITR 342 (SC)



APPROVAL		the COD approval has not been taken. The Supreme Court held that since the issue appears to be covered by the decision of the Supreme Court, the High Court should decide the issue on the merits.		
APPEAL – HIGH COURT – MONETARY LIMIT	260A, 268A	In case of appeal against composite order of Tribunal, in view of para. 5 of the CBDT instruction No. 5 of 2008 dt. 15 th May, 2008, if monetary limit exceeds in one assessment year and it is proposed by revenue to file an appeal before High Court in respect of such assessment year then appeal shall be maintainable in respect all the assessment years irrespective of tax effect and for that purpose, it is not necessary that the issue involved in appeals before Tribunal must be common.	Polycott Corporation	(2009) 222 CTR 328 20 DTR 16 178 Taxman 225 (Bom)
APPEAL – HIGH COURT - MONETARY LIMIT – MAINTAINABILITY	260A, 268A	Maintainability of appeal at the instance of revenue before the Tribunal and before the High Court being governed by different parameters as laid down in CBDT instructions, objection as regards maintainability can be raised by assessee before High Court even though such an objection was not raised before the Tribunal. Appeal filed by the revenue having tax effect lower than that prescribed by the Board instructions, the appeal was not maintainable.	Oscar Laboratories (P) Ltd.	(2009) 222 CTR 546 20 DTR 169 (P&H).
APPEAL – HIGH COURT- SUBSTANTIAL QUESTION OF LAW	260A	Where the finding of facts recorded by the Tribunal is perverse or contrary to the material on record, the High Court while exercising powers u/s. 260A of the Act is competent to interfere with such a perverse finding of facts.	Gauri Kanta Barkataky	(2009) 25 DTR 75 (Gau)
APPEAL – IDENTICAL ISSUE	261	Revenue having not filed any appeal in other assessment years. It is precluded from filing appeals in the relevant assessment years involving identical fact situation.	J.K. Charitable Trust	(2008) 15 DTR 41 175 Taxman 251 220 CTR 105 (2009) 308 ITR 161(SC).
APPEAL – ORDER GIVING EFFECT	246A(1)(a), 264	Appeals are maintainable from fresh orders passed by the AO to give effect to revisional order passed u/s. 264, but only such issues can be agitated in such appeals which have not attained finality by virtue of order passed u/s. 264.	Jai Hotels Co. Ltd.	(2009) 24 DTR 37 (Del.)
APPEAL – POWER OF CIT(A) – SET ASIDE	251	After 1 st June, 2001, CIT(A) has no power to set aside the issue to the file of the AO for reconsideration.	Suri Sons	(2009) 124 TTJ 800 (Asr).
APPEAL – TRIBUNAL	249(4), 253	Against the dismissal of appeal by the CIT(A) for non payment of tax as per returned income, appeal to Tribunal is not maintainable.	Sushil Thomas Abraham	(2009) 212 Taxation 214 (Ker)
APPEAL – TRIBUNAL RIGHT OF RESPONDENT.	Rule 27	Where the CIT(A) decided the ground of reopening against the assessee but decided the ground of merits in favour of the assessee, the assessee is entitled, in an appeal by the Revenue before the	Triace	ITA No. 2827/Mum/04, A.Y. 1995-96, Bench-H, dated 26-11-2007 www.itatonline.org



		Tribunal, to urge, under Rule 27 of the I.T. Rules, that the CIT(A) was wrong in deciding the ground of reopening against the assessee.		
APPEAL – TRIBUNAL – ADDITIONAL GROUND – ADMISSIBILITY	254(1)	Ground challenging the jurisdiction to make block assessment can be urged before any authority for the first time. Bar of estoppel or res judicata does not apply when the validity of assessment is questioned for want of jurisdiction.	Bijay Shankar Gupta	(2009) 21 DTR 254 (Jd)(Trib).
APPEAL – TRIBUNAL - ADDITIONAL GROUND – INTEREST	234B, 254(1)	Plea against charging of interest u/s. 234B, could be allowed to be raised by the assessee in appeal before the tribunal notwithstanding the fact that it was not raised by it before lower authorities.	S. Kumars Tyre Manufacturing Company Ltd.	(2009) 227 CTR 181 (MP).
APPEAL - TRIBUNAL – CROSS OBJECTION	253(4)	Memorandum of cross objection to be considered as an appeal and has to be disposed, it cannot be held to be anfractuious and has become academic.	Tata Sponge Iron Ltd.	(2008) 307 ITR 441 (Orissa)
APPEAL - TRIBUNAL – POWER TO DISMISS.– EXCISE ACT	35C	Every court or tribunal has an inherent power to dismiss a proceeding for non prosecution when the petitioner/appellant before it does not wish to prosecute the proceeding.	Chemipol	www.itatonline.org
APPEAL – TRIBUNAL – POWERS – DIRECTION	254(1),	In the absence of any adverse, finding by the AO against the assessee vis-à-vis applicability of s. 14A, Tribunal while accepting the assessee’s contention, was not correct, in recording the direction to consider the applicability of s. 14A, while remanding the matter.	Topstar Mercantile (P) Ltd.	(2009) 225 CTR 351 28 DTR 215 (Bom)
APPEAL - TRIBUNAL – POWERS - RECTIFICATION OF MISTAKE	254(2) & 255	When the question was pending before the High court, it was not right for the assessee to agitate it before the Tribunal. It is for the bench to decide whether there should be joint consideration by members before draft order finalised. Merely because there was no specific mention of each argument, the order could not be said to be vitiated by mistake apparent from the record.	Tata Communications Ltd.	(2009) 317 ITR 1 (AT) 124 TTJ 721 121 ITD 384 (Mumbai) (SB).
APPEAL – TRIBUNAL - RECTIFICATION OF MISTAKES - CONDONATION OF DELAY	254(2)	There is no provision u/s. 254(2) to entertain rectification application received after the expiry of period of four years nor the provisions of s. 5 of the Limitation Act are applicable to proceedings before quasi judicial authorities like Tribunal and, therefore, condonation of delay in filing miscellaneous application for rectification of order u/s. 254(1) cannot be allowed.	Rahul Jee & Co. (P) Ltd.	(2009) 123 TTJ 217 22 DTR 329 120 ITD 481 (Del).
APPEAL – TRIBUNAL – TRIBUNAL’S DUTY TO PASS SPEAKING ORDER	254	Merely confirming CIT(A)’s Order without recording reasons, ITAT’s Order to be set aside and has to be remanded back. The Order of the Tribunal does not satisfy even the bare necessities of an Order of a quasi-judicial body, and hence, to be set aside.	India Carbon Limited	(2009) 315 ITR 315 (Gau)
APPEAL _ TRIBUNAL – REQUEST FOR ADJOURNMENT IN	254(1)	Where both the parties request for adjournment in the absence of their respective counsels, the	Avon Cycles Ltd.	(2009) 309 ITR 247 (P&H)



ABSENCE OF RESPECTIVE COUNSEL.		Tribunal can consider their request or proceed to decide the case on the merits instead of dismissing the case. The technicalities should take a back seat as far as determination of rights of the parties are concerned. The parties should be afforded opportunity to address arguments on the merits instead of dismissing the case for default.		
APPEAL FEES – TRIBUNAL - ASSESSEE	253(6)	Total income determined at negative figure, hence fee of Rs. 500/- alone payable. Editorial – Andhra Pradesh State Electricity Board v ITO (1994) 49 ITD 552 (AP), over ruled.	Gilbs Computer Ltd.	(2009) 317 ITR 159 27 DTR 163 (Bom)
APPEAL –HIGH COURT---- MONETARY LIMIT	260A	Circular No. 5 of 2008 dated 15-5-2008, which provides that in case of an assessee where the disputed issue arises in more than one assessment year, appeal by the Revenue shall be filed in respect of such assessment year or years in which the tax effect in respect of the disputed issue exceeds the monetary limits provided in the circular. This was held to be applicable to all the cases pending before the High Court either for admission or final hearing and it is binding on the Revenue authorities.	Madhukar K. Inamdar (HUF)	(2009) 185 Taxman 101 27 DTR 132 318 ITR 149(Bom)
APPEAL- THE APPELLATE TRIBUNAL- SETTLEMENT COMMISSION.	253 vis-à-vis 251 r.w.s. 254H	Assessee appealed before the Appellate Tribunal against dismissal of appeal by the CIT(A) on the ground that the appeal had become infructuous and non est before him as the issues were placed before the Settlement Commission. In otherwords, the CIT(A) loses his jurisdiction to decide the appeals in such situation. So, order passed by the CIT(A), dismissing the appeal, is only a technical order for statistical purposes and such order is not appealable order before the Appellate Tribunal.	J.C. Augustine	(2009) 312 ITR 60 (AT)(Cochin).
APPEAL TRIBUNAL – MAINTAINABILITY – CLEARANCE FROM COMMITTEE ON DISPUTES	253(1), 253(2)	In the absence of clearance from COD, cross appeals between State PSU and IT Department dismissed as not be maintainable and kept in suspended animation till COD clearance was obtained or reliable evidence was produced showing that COD having mandate in the matter did not exit.	Maharashtra State Warehousing Corpn. Ltd.	(2009) 22 DTR 531 (Pune)
APPEAL-HIGH COURT HAS NO POWER TO CONDONE DELAY IN FILING APPEALS	35G of the Central Excise Act, 260A	Where s. 35G of the Central Excise Act (260A of the I.T. Act) provided a time limit of 180 days for filing an appeal and there was no provision for condoning delay by showing sufficient cause after the prescribed period, there was complete exclusion of s. 5 of the Limitation Act and the High Court had no power to condone the delay after expiry of the prescribed period. Even otherwise, the legislature had provided sufficient time for filing a reference to the High Court which was more than the period prescribed for an appeal and revision. Note: The judgment of the Full Bench of the Bombay High Court in CCE vs. Shree Rubber Plast is impliedly overruled.	Hongo India	www.itatonline.org (2009) 315 ITR 449 223 CTR 225 22 DTR 9 (SC)



		See Also: Shruti Colourants (Bom) and Velingkar Brothers 289 ITR 382 (Bom Full Bench). _____		
APPELATE TRIBUNAL – APPEAL – POWER OF VICE PRESIDENT	255(1)	Vice President of the Tribunal has powers to prepone cases in order to streamline their disposal.	K Raheja (P) Ltd.	(2009) 124 TTJ 933 (Mum.)
APPELLATE TRIBUNAL - ADDITIONAL GROUND – LIMITATION	254(1)	Additional ground on the issue of limitation is permissible.i.e. warrant of authorization being available on record.	Asha Maritime (India) (P) Ltd.	(2009) 25 DTR 249 124 TTJ 481 (Mum) (Trib).
APPELLATE TRIBUNAL- RECTIFICATION OF MISTAKES - APPELLATE TRIBUNAL – POWER -NON CONSIDERATION OF AGREEMENT	254(2)	Non consideration of any argument advanced by either party for arriving at a conclusion is not an error apparent on record, although it may be an error of judgement and same can not be rectified u/s. 254(2).	Essel Propack Ltd.	(2009) 34 SOT 359 (Mum)
APPELLATE TRIBUNAL – POWER- STAY	254(1)	Assessee challenged the order passed by CIT rejecting the application u/s. 273A by way of writ petition before the High Court and also sought stay of recovery of penalty imposed on him. Court granted stay of recovery of demand on certain conditions but the same was subsequently vacated on default of the assessee. Assessee was seeking stay of recovery of penalty and interest in the appeal filed before the Tribunal against levy of said penalty. It was held that though the jurisdiction of the High Court in the writ petition and that of the Tribunal in the appeal before it might be different, the question whether the recovery of demand should be stayed was identical and in the light of the said direction of the High Court, it would be highly improper for the Tribunal to grant stay of recovery of demand and start parallel proceedings.	G. Venkateshwaran	(2009) 23 DTR 290 119 ITD 1 123 TTJ 1 (Mad)(Trib).
APPELLATE TRIBUNAL - ADDITIONAL EVIDENCE - RULE 46A - POWER OF TRIBUNAL	254(1)	The additional evidence goes very root of the matter and a reasonable approach is needed and not the hyper technical approach adopted by the tribunal hence the matter remanded to the Tribunal. Editorial – See Smt. Prabhavati Shah vs. CIT (1998) 231 ITR 1 (Bom).	Daljeet Kaur	(2009) 212 Taxation 46 (MP)
APPELLATE TRIBUNAL – ADDITIONAL GROUND	254(1)	Where neither during the assessment proceedings, nor during the appellate proceedings before the CIT(A), the revenue had invoked the provisions of s. 14A of the Act with respect to expenditure incurred for earning exempt dividend income and further, there was no material before the Tribunal, which would have permitted it to take up the additional ground pertaining to s. 14A, the Hon’ble	Hindustan Tin Works Ltd.	(2009) 24 DTR 88 (Del)



		High Court on these facts held that the Tribunal was justified in rejecting the plea of the revenue to raise additional ground pertaining to s. 14A of the Act for disallowing expenditure incurred for earning exempt dividend income.		
APPELLATE TRIBUNAL - POWERS	254(1)	It is not open for the tribunal to take away the benefit given by the AO.	Anant Y. Chavan	(2009) 32 DTR 377 126 TTJ 984 (Pune)
APPELLATE TRIBUNAL – POWERS	254(1)	Where the revenue authorities had challenged the action of the CIT(A) granting a partial relief to the assessee before the Tribunal and there was no appeal or cross objection filed by the assessee in absence of such appeal or cross objection, Tribunal could not grant 100 per cent relief to the assessee in appeal filed by the revenue.	Sisodia Marble & Granite (P) Ltd.	(2009) 18 DTR 147 (Raj)
APPELLATE TRIBUNAL – POWERS - NEW GROUND BY THE REVENUE)	254(1)	A new ground may be allowed to be raised only when it arises from the facts, which are on record. The revenue sought to raise additional ground before the Tribunal, which required the Tribunal to restore to the file of the AO or the CIT(A) the point regarding assessability of certain amount of interest. The Tribunal rejected the revenues, application on the ground that issue of taxability of the interest was not part of the subject matter of the assessment order or of the order of first appellate authority for the assessment under appeal. The High Court held that the revenue was seeking new source of income which was not there in assessment proceedings hence the Tribunal was correct in not permitting revenue to raise additional ground.	Dalmia Dairy Industries Ltd.	(2009) 176 Taxman 169 (Delhi)
APPELLATE TRIBUNAL – POWERS – RECTIFICATION OF MISTAKE	254(2)	The Assessee filed a miscellaneous application to rectify the mistake in the Special decision. It was found that the High Court held that the order of Special bench was not sustainable. When the order of Tribunal merged with the order of High Court in appeal the miscellaneous application of assessee was dismissed.	Padam Prakash (HUF)	(2009) 117 ITD 129 (Delhi) (SB)
APPELLATE TRIBUNAL – POWERS OF TRIBUNAL WHERE TWO VIEWS ARE POSSIBLE ON AN ISSUE	254(1)	After considering the judgment of the Apex Court in case of CIT vs. Vegetable Products Ltd. [88 ITR 192], where it was held that if two views are taken by different High Courts, view favourable to the assessee should be adopted, the Hon'ble Bench of the Tribunal held that a solitary judgment of any High Court, in the country on a particular point or issue, should be followed in its letter and spirit by all Benches of the Tribunal notwithstanding contrary views expressed by some Benches of the Tribunal, unless there are strong reasons to deviate from the view expressed by the High Court. Otherwise, the hierarchical judicial system would collapse.	Ranisati Fabric Mills (P.) Ltd.	(2009) 309 ITR 117 118 ITD 293 (AT) (Mumbai).
APPELLATE TRIBUNAL - REASONED ORDER	254(2)	It is incumbent upon the Tribunal to appreciate the evidence and pass a reasoned order. Tribunal having passed the order more than four months	Shivsagar Veg. Restaurant	(2009) 317 ITR 433 (2008) 16 DTR 30



AND REASONABLE TIME		after hearing the appeal, impugned order is set aside and the appeal is restored to the Tribunal with a direction to rehear the appeal and decide the fresh by a reasoned order. The President of the Tribunal is directed to frame and lay down guidelines for expeditious delivery of judgments.		220 CTR 563 (Bom)
APPELLATE TRIBUNAL – RECTIFICATION OF MISTAKE	254(2)	If the Tribunal has committed an inadvertent error which results in injustice to one or other side, the Tribunal is entitled to recall the order in given set of facts and circumstances of the case and decide the matter in accordance with law, facts and evidence on record.	Niranjan K. Zaveri	(2009) 20 DTR 153 (Guj).
APPELLATE TRIBUNAL – RECTIFICATION OF MISTAKE	254(2)	Non-consideration by the Tribunal of a Supreme Court judgment relevant to the point in issue would give rise to a mistake apparent from the record which can be rectified u/s. 254(2).	V.L.S. Finance Ltd.	(2008) 15 DTR 180 310 ITR 224 (2009) 178 Taxman 433 (Delhi)
APPELLATE TRIBUNAL – RECTIFICATION OF MISTAKES – GENERAL OBSERVATIONS	254(2)	On the basis of general observation rectification of order u/s. 254 is not permissible.	Dhariwal Industries Ltd.	(2009) 31 SOT 10 123 TTJ 613 25 DTR 58 (Pune)(SB)(Trib).
APPELLATE TRIBUNAL – RIGHT OF RESPONDENT - RULE 27 OF RULES 1963	RULE 27	As per Rule 27 of ITAT Rules, 1963, even if the respondent has not filed any appeal or cross objection, he can still agitate the points which were decided against him. When the issue was not adjudicated by the CIT(A), than it shall be deemed to have been decided against the appellant.	India Cements Ltd.	(2009) 121 TTJ 568 (Chennai).
APPELLATE TRIBUNAL – RIGHT OF RESPONDENT .	RULE 27	The respondent can support his argument against the appeal filed by the Appellant on the points which has been rejected by the CIT(A).	Hind Industries Ltd.	(2009) 120 TTJ 505 (2008) 26 SOT 196 19 DTR 561 (Del)
APPELLATE TRIBUNAL -POWER – ORDER	254,(1) Rule 34	According to the Rule 34 of the IT (Appellate Tribunal) Rules, 1963 an order of the Tribunal can only be in writing as duly signed and dated by the members constituted it. Hence, oral pronouncement during the course of hearing is not an order at all. It is only an intimation of likely result or prima-facie conclusion expressed on the basis of contentions made by the parties. It was held to be a procedural aspect and it does not create any statutory embargo or limitation. Even entry in the order sheet to that effect signed by the members of the bench would not constitute an order because an order is a mandate precept or command but reasoning is its soul. Hence without any reasoning or conclusion based upon considered or authoritative opinion on a matter or context, oral pronouncement cannot be an order in the strict sense.	Mafatlal Securities Ltd.	(2009) 119 ITD 444 (Mum.)
APPELLATE TRIBUNAL -POWER - SEARCH AND SEIZURE	132(1), 254(1)	Tribunal has power to examine validity of search in an appeal against block assessment i.e. validity of search warrant.	Chika Sidram Vyankatesh	(2010) 1 ITR 369/ 122 ITD 293 (Pune)



APPELLATE TRIBUNAL-POWER-ENHANCEMENT	254(1)	Under section 254(1), the Tribunal has no power to take back the benefit conferred by AO or enhance the assessment. In the present case since the assessing officer has granted depreciation the benefit could not be withdrawn by the Tribunal.	Mcorp Global P. Ltd.	(2009) 309 ITR 434 (SC)
APPELLATE TRIBUNAL-RECTIFICATION OF MISTAKE-APPELLATE TRIBUNAL- MERGER	254(2)	Order u/s. 254(2) merges with original order. Second application for rectification not maintainable.	S. Panneerselvam (Dr).	(2009) 319 ITR 135 (Mad).
APPELLATE TRIBUNAL RECTIFICATION OF MISTAKES - - JUDGEMENT OF SUPREME COURT AND JURISDICTIONAL HIGH COURT	254(2)	If an order passed by Tribunal is not in conformity with judgement of Supreme Court or that of Jurisdictional High Court rendered prior to or subsequent to impugned order, same constitute a mistake apparent from record. Editorial – In Kishanchand J. Bhavanai v WTO (1989) 29 ITD 383 (Bom), the Tribunal has held that subsequent judgement of jurisdiction High Court, order of Tribunal can not be rectified.	Kailasnath Malhotra	(2009) 34 SOT 541 (Mum)(TM).
APPELLATE TRIBUNAL-RECTIFICATION – MISTAKE APPARENT ON RECORD – TRIBUNAL	254(2)	Where the Tribunal rejected the Appeal and also the rectification application relying upon the decisions which were neither cited by the departmental representative nor the assessee who had any notice of the same and also without taking into consideration the vital statements, the High Court on writ filed by the assessee remanded the matter to the Tribunal to decide it afresh after hearing both the parties in accordance with law.	Naresh K. Pahuja	(2009) 19 DTR 273 224 CTR 284. (Bom).
ASSESSMENT – ADDITIONS – RETRACTING STATEMENT	132(4)	Where additions made on the basis of statement recorded u/s. 132(4) which was subsequently retracted; order of Tribunal set aside. Editorial:- Vinod Solanki vs. UOI (2009) 233 E.L.T. 157(SC)	Om Prakash K. Jain	(2009) 213 Taxation 708 178 Taxamn 179 (Bom)
ASSESSMENT - AGENT OF NON-RESIDENT	149(3), 160(1)(3), 163	Time limit provided u/s. 149(3), would not apply to an assessee who has voluntarily filed return of his non-resident principal and in whose case no order u/s. 163 has been passed treating him as an agent of non-resident.	J.M. Baxi & Co.	(2009) 117 ITD 131 312 ITR 102 20 DTR 420 (Mum) (SB)
ASSESSMENT – BLOCK ASSESSMENT-SEARCH AND SEIZURE	153C, 153A, 158BD	In terms of s. 153C, if valuables or books of account or documents belonging to other persons are seized then action u/s. can be taken against that person. In the instance case, books of account or documents did not belong to assessee, hence the assessing officer was not justified in initiating action against him u/s. 153A r.w.s.153C.	P. Srinivas Naik	(2009) 117 ITD 201 (Bang).
ASSESSMENT – HUF	171(9)	Assessee having not been assessed as an HUF ever before the assessment year in question, provision of s. 171 could not be invoked to make assessment in the status of HUF.	Tirlochan Singh	(2010) 228 CTR 390 (P&H)



ASSESSMENT - HUF - PARTITION	171	When there is no order recording partition u/s. 171(3), original assessment in the status of family attaining finality, assessment to be made as family.	Gaurikanta Barkataky	(2009) 313 ITR 34 25 DTR 75 181 Taxman 316 (Gau)
ASSESSMENT - INTIMATION	143(1)(a), 143(2)	Intimation u/s. 143(1)(a) cannot be issued after notice was given u/s. 143(2) of the Income-tax Act.	Tata Sponge Iron Ltd.	(2008) 307 ITR 441 (Orissa)
ASSESSMENT - LIMITATION	153(2A) & 153(3)(ii)	Tribunal having merely upheld the order of CIT(A) for Asst years 1989-90 to 1991-92, consequential order passed by AO on 10 th March, 2004 for Asst. Year 1989-90, which was partially set aside by CIT(A) on receipt of the order of the Tribunal is anfractuous and honest in the eyes of law and there is no question of applicability of s. 153(2A) or 153(3)(ii). CIT(A) having fully set aside the assessment orders for Asst. Years 1990-91 and 1991-92 vide order dt. 10 th October 1996, the AO had to pass the fresh assessment orders within time limit prescribed u/s. 153(2A) and therefore, orders of fresh assessment passed by the AO on 12 th March, 2004 were barred by limitation.	Raghava Health Care Ltd.	(2009) 120 TTJ 124 (Visakha)
ASSESSMENT - LIMITATION - NOTICE	143(2)(1) 143(2)	Notice u/s. 143(2)(i) as well as notice u/s. 143(2)(ii) are to be issued within time specified in proviso to s. 143(2) and the notice issued u/s. 143(2)(i) can not by itself extend the time for issuance of notice u/s. 143(2)(ii). Assessee having filed return on 26 th Sept., 2001, notice issued u/s. 143(2)(ii) on 28 th July, 2003 was time barred even though the case was initially selected for limited scrutiny u/s. 143(2)(i).	Bholanath R. Shukla	(2009) 21 DTR 270 (Mum) (Trib).
ASSESSMENT - LOOSE SHEETS - UNACCOUNTED LOAN	143(3)	Merely on the basis of document recovered from search bearing no signature of assessee or borrower addition can not be made.	Anil Kumar Bhattia	(2010) 1 ITR 484 (Delhi) (Trib)
ASSESSMENT - NOTICE U/S. 143 (2) - VALIDITY	143(2).	Assessment order passed either without serving notice u/s. 143(2) or serving the notice improperly upon the assessee can not be said to be void and the assessment order can not be annulled on this ground	Haryana Sanitary Ware Industries (P) Ltd.	(2009) 31 DTR 329 (Del)(Trib).
ASSESSMENT - PARTITION - HUF	171	Provisions of s. 171 of the Act, deal with assessment after the division of the Hindu Undivided Family (HUF). Thus, before provisions of s. 171 of the Act can be invoked, to assess the property even after partition, as a HUF, it should have been assessed as HUF before such partition also.	Tirlochan Singh	(2009) 19 DTR 277 (P&H)
ASSESSMENT - PRIMA FACIE ADJUSTMENT	143(1)(a)	Issue as to funding of outstanding interest by a fresh loan would or would not amount to payment of interest is a debatable issue. Disallowance u/s. 43B cannot be made by way of prima facie adjustment u/s. 143(1)(a) of the Act.	Vinir Engineering (P) Ltd.	(2009) 22 DTR 107 (Karn.)
ASSESSMENT - SEARCH - STATEMENT -	132(4)	Letter of assessee, could not be made use of by Revenue as an admission u/s. 58 of the Evidence Act 1872. Letter can not be considered as a	Pampapathi	(2009) 310 ITR 64 (Karn).



LETTER		statement made u/s. 132(4). Assessment has to be made on the basis of revised return.		
ASSESSMENT – SERVICE OF NOTICE	143(2) r.w.s. 143(3)	Assessment made u/s. 143(3) without proving the service of statutory notice within the prescribed time, was held to be invalid and required to be quashed.	Amarjeet Kaur	(2009) 180 Taxman 26 (Delhi)
ASSESSMENT - SERVICE OF NOTICE BY AFFIXTURE ON A CHARTERED ACCOUNTANT	143(2), 144	Service of notice u/s. 143(2) by affixture on an earlier Chartered Accountant and not latest Chartered Accountant is invalid. Consequently best assessment was also invalid.	Kewalchand Darkalia	(2009) 19 DTR 317 121 TTJ 273 (Jd)(Trib).
ASSESSMENT - VALIDITY – DIRECTION OF HIGHER AUTHORITY – NULLITY	143(3), 147, 148, 150	By no stretch of imagination a higher authority can interfere with the independence of the assessing authority which is the basic feature of any statutory scheme involving adjudicatory process. Thus the assessment order passed by the AO at the instance of the higher authority i.e. CIT is illegal. S. 150 brings within its ambit only such cases where reopening of the proceedings may be necessary to comply with an order of the higher authority. If there is no proceedings before higher authority or if the assessment year in question does not fall for consideration before it, s. 150 has no application. CIT therefore had no jurisdiction to issue direction regarding issuance of notice u/s. 148.	Greenworld Corporation	(2009) 314 ITR 81 23 DTR 185 224 CTR 113 181 Taxman 111 (SC).
ASSESSMENT-NOTICE- BLOCK ASSESSMENT	143(2), 158BC, 260A.	Notice u/s. 143(2) not having been issued within one year of filing the return by assessee, block assessment was invalid. No substantial question of law arises.	Mudra G. Nanawati	(2009) 30 DTR 108 (Bom).
ASSESSMENT-NOTICE- BLOCK ASSESSMENT	143(2), 158BC, 292BB.	AO having not issued any notice u/s. 143(2) before completing the assessment u/s. 158BC(c), assessment was bad in law and liable to be quashed. S. 292BB does not save the same.	Supreme Appar & Associates	(2009) 30 DTR 229 (Mum)(Trib).
ASSESSMENT RECORDS – DEMAND BY THE THIRD PARTY – RTI ACT	3, 8, 9.	The Appellant, as informer, is assisting the Department by bringing instances of tax evasion to its notice, and if he is using information that he has received through RTI Applications for this purpose, it cannot be considered to be misuse of information in any way, nor can it be considered to be an unwarranted invasion of privacy of the assessee. Accordingly PIO was directed to provide inspection of records and the other information sought by the applicant.	Rakesh Kumar Gupta	www.itatonline.org
ASSESSMENT-NOTICE SERVED AFTER OFFICE HOURS	143(2), 153C	Notice u/s. 143(2), served after office hours on last date, no authorised person was present at the premises to receive, notice was affixed .Notice affixture not valid, though the assessee appeared in person not relevant. Assessment not valid.	Vishnu and Co. P. Ltd.	(2009) 319 ITR 151 (Delhi).
ASSET – URBAN LAND	2(ea)(v) & 2(ea), Expln. 1(b)	Land belonging to the assessee on which he has unauthorisedly constructed a farm house stands excluded from the definition of ‘urban land’ as per Expln. 1 (b) to s. 2 (ea) as no construction was permissible on said land and therefore, it cannot be	Lt. Gen. (Retd.) R.K. Mehra	(2010) 228 CTR 205 (P&H)



		treated as an asset under the WT Act.		
ASSOCIATION OF PERSONS - SET-OFF OF LOSS	67A	A Company or Co-operative Society or Society appearing in parenthesis of s. 67A qualify expression "Association of Persons or Body of Individuals" and they do not relate to a member of such an AOP/BOI and therefore, share of loss from an AOP deserved to be set-off in hands of assessee against its other income computed under various heads.	Mahindra Holdings & Finance Ltd.	(2008) 115 ITD 69 (Mum)(TM).
AUDIT REPORT – RETURN	10B(5)	Filing of Audit Report u/s. 10B(5) along with the return is directory and not mandatory.	Web Commerce (I) P. Ltd.	(2008) 178 Taxman 310 (Del).
AUTHORISED REPRESENTATIVE - RESIGNED MEMBERS & MEMBERS WHO RETIRED BEFORE 3.6.2009 CAN PRACTICE BEFORE THE ITAT	288	The Tribunal has inherent jurisdiction to consider whether the parties who are appearing before it are properly entitled under the law to make appearance.	Concept Creations	(2009) 120 ITD 19 125 TTJ 433 (Del)(SB).
AUTHORITY FOR ADVANCE RULING - WRIT	245U, ART. 226, 131	Authority for Advance Rulings is a Tribunal, hence, High Court can issue writ against advance ruling.	U.A.E. Exchange Centre Ltd.	(2009) 313 ITR 94 223 CTR 250 183 Taxman 495 (Del.)
AVOIDING REPETITIVE APPEALS	158A	The Tribunal dismissed the appeals of the assessee following its order for earlier years against which appeal was pending before the High Court. The appeals were dismissed by the Tribunal even though the assessee had made a declaration u/s. 158A of the Act for keeping the issue pending till it was decided by the High Court. On these facts the High Court set aside the order passed by the Tribunal with a direction to the Tribunal to admit the claim of the assessee as made in the declaration u/s. 158A and proceed further as per s. 158A(5) of the Act after the appeal of the assessee for earlier year is adjudicated by the High Court.	Titanor Components Ltd.	(2009) 26 DTR 43. 184 Taxam 10. 224 CTR 566 (Bom)
BAD DEBT	36 (1) (vii)	Assessee has to prove "bad debt" even under new s. 36 (1) (vii)	Kohli Brothers Color Lab	(Allahabad High Court) WWW.itatonline.org.
BAD DEBT – BUSINESS LOSS	28, 36(1)(vii), 37	Amount paid by the assessee under performance guarantee bond is allowable as business loss/expenditure. Mere fact that the assessee has claimed the amount written off in the course of business as bad debt does not preclude him from claiming the same as business loss/ expenditure.	Anang Tradevest Pvt. Ltd.	ITA No. 10/Mum/2008 Dt. 10/8/2009. Source: BCAJ Vol. 41-B Part 2 Nov. 2009 Pg. 20
BAD DEBT – DEDUCTIBLE	14A, 36(1)(vii), 80HHC	U/s. 80HHC and s. 14A, the expenditure incurred from the export income could not be held to be for earning income which did not form part of the total income, which concept was dealt with u/s. 10 of the Act. S. 80HHC deals with deduction of the element of profit from export from taxable income. Therefore, the claim of bad debt could not be	Kings Exports	(2009) 318 ITR 100 (P&H).



		disallowed.		
BAD DEBT – SHARES SOLD FOR ADJUSTMENT – MATTER REMANDED	36(1)	As the shares was not delivered for the want of full payment to be made by the sub – broker to the assessee, the transaction being genuine as the shares are in possession of assessee it could sell off the shares in whatever consideration to be adjusted against the balance amount payable by the sub-broker to the assessee before arriving at the actual figure of bad debt. Matter remanded back to the Tribunal for fresh consideration.	D.B. (India) Securities	(2009) 318 ITR 26 (Del).
BAD DEBT – YEAR OF ALLOWABILITY	36	Amount written off bonafide in AY 2000-01 and charged to Profit & Loss account in that year but claimed deduction for the first time in AY 2001-02 could be allowed as bad debt in later year.	EDS Electronic Data Systems (India) (P) Ltd.	(2009) 23 DTR 10 (Del)(Trib).
BAD DEBT- SALE CONSIDERATION RECEIVED PARTLY	36(2)	Profit on sale of various companies shares have been shown under the head “other income”. When assessee received part of sale consideration balance wrote off as irrecoverable bad debt, the condition of s. 36(1), r.w.s. 36(2) satisfied hence amount written off allowable as bad debts.	Dalmia (Bros) (P) Ltd.	(2009) 184 Taxman 240 (Delhi).
BAD DEBTS	36(1)(ii)	Assessee is not required to prove that the debt has become bad. Assessee only to write off the debt as bad in its books. Law with effect from Assessment Year 1989-90.	Lawlys Enterprises Pvt. Ltd.	(2010) 214 Taxation 256. 28 DTR 150(Patna)
BAD DEBTS -	36(i)(vii),	As per amended provisions of s. 36(1)(vii), once the assessee has written off debt in his books of account, it is not requirement of law that he should establish that debt has, in fact become bad.	Suresh Gaggal	(2009) 180 Taxman 90 (HP).
BAD DEBTS - BURDEN OF PROOF	36(1)(vii)	Post amendment of ss. 36(1)(vii) & 36(2), the burden is not on the assessee to show the debt is “bad”. In order to disallow, the AO must show that the decision of the assessee was not bona fide. The decision of an assessee to treat a debt as a bad debt in his books has to be a business or commercial decision and not whimsical or fanciful and must be based on material that the debt is not recoverable. Refer Shiv Bing 100 ITD 285 (Mum)(SB).	Oman International Bank	(2009) 313 ITR 128 184 Taxamn 314. 223 CTR 382 (Bom).
BAD DEBTS - BUSINESS LOSS - SHARE BROKER	28(i), 36(1)(vii), 36(2)	Assessee a share / stock broker, claimed bad debts of certain amount representing the cost of scripts not recovered as well as brokerage not recovered. The Tribunal held that the assessee is entitled to deduction u/s. 36(1)(vii) only with regard to brokerage, which had been taken into account while computing total income. Since cost of scripts was never taken into account while computing income, it could not be called to be bad debt for purpose of s. 36(1)(vii). However, the cost of scripts could be termed as “trading loss”, which could be allowed subject to fulfillment of other conditions prescribed in that regard.	G.R. Pandya Share Broking Ltd.	(2008) 26 SOT 431 (Mum).



BAD DEBTS – DEDUCTION	36(1)(vii)	Assessee having valid reasons for judging that amount not recoverable. Assessee having obtained a decree to recover debt does not mean that debt was not bad. Assessee was entitled to deduction of bad debt.	Punjab Tractors Ltd.	(2010) 320 ITR 153 (P&H)
BAD DEBTS – IRREVOCABLE	36(1)(vii)	Bad debts need not be proven to be irrecoverable u/s. 36(1)(vii). It is sufficient if they are written off.	TRF Limited	www.itatonline.org
BAD DEBTS – SHARE BROKER	36(1)(vii), (2)	Where share broker purchasing shares for its clients and paying money against purchase and money receivable from client becoming bad and treated as bad bed. Held that brokerage payable by client is part of bad debt to be taken into account.	Bonanza Portfolio Ltd.	(2010) 320 ITR 178 (Delhi)
BAD DEBTS - SHARE BROKER)	36(2)	In the case of share broker the loss is allowable as bad debts, though only brokerage has been credited to profit & loss account.	Canon Capital & Finance Ltd.	ITA No. 1119/Ahd/2005 Asst. Year 2001-02, Bench 'D' dt. 7-11-2008.
BAD DEBTS - UNILATERAL WRITING OFF SUFFICIENT AFTER CHANGE OF LAW	36(1)(vii) & 36(2)	<p>Departmental SLP rejected against the Bombay High court where by the High Court dismissed the departmental appeal in ITA Nos. 383 and 437 of 2008.</p> <p>Editorial – See Judgment of Mumbai Tribunal Shri Rahendra Y. Shah v ACIT ITA No. 1437/Mum/1999, Bench B dt. 21-9-2006. (Asst year 1992-93)</p> <p>Judgment of Bombay High Court ITA No. 1000 OF 2007 dt. 10th July 2008.</p> <p>CIT v Rajendra Y. Shah S.L.P. (C) No. 8364 of 2009. dt. 2-4-2009. (2009) 313 ITR 3 (ST).</p> <p>DCIT v Oman International Bank (2009) 313 ITR 128 (Bom).</p> <p>CIT v Star Chemicals (Bombay) P. Ltd. (2009) 313 ITR 126 (Bom).</p>	Nelco Ltd.	S.L.P. Nos. 16373-16374 of 2009 dt 7-7-2009. (2009) 317 ITR 6 (ST).
BAD DEBTS - WRITING OFF IN BOOKS SUFFICIENT	36(2)(iv)	Assessee is entitled to claim deduction if the debt had been written off as irrecoverable in the books of account and there is no obligation on the assessee to establish that debt had become bad.	Rajendra Y. Shah	(2009) 313 ITR 3 (St).
BALANCING CHARGE – DEPRECIATION	32(1), 41(2)	Assessee company claimed depreciation at 100 % on wind mill project which was allowed. Subsequently the wind mills were destroyed in cyclone against which assessee received certain amount from insurance company. Revenue authorities brought said amount to tax u/s 41(1) of the income Tax Act. The tribunal held that the amount received from insurance company cannot be taxed u/s. 41(1).	Rajhans Metals (P) Ltd.	(2010) 122 ITD 189 (Mum)
BEST JUDGMENT ASSESSMENT	144	<p>Held, that Best Judgment Assessment on basis of conclusion based on suspicion and false notions and assumption, as per AO's own whims and yardsticks, is not justified.</p> <p>Further it was observed that :</p>	Renu Mukerjee	177 Taxman 58 (Delhi)



		<p>i) Best Judgment Assessment has to be fair, reasonable and based on material, wherein some guess work cannot be ruled out.</p> <p>ii) Once books of account is rejected, then reliance on some entries in those books to make separate addition is not justified.</p>		
BINDING NATURE – CIRCULARS ISSUED BY CBDT	119	Though the Circulars issued by the CBDT are not binding on the court, it is binding on the authorities and while it is for the Court to read the section in its proper context, while so reading the Court will bear in mind the circular issued by the CBDT. Circulars are sometimes issued to obviate difficulties in the operation of the provisions and these are aspects which Courts do bear in mind while considering the Circulars. Accordingly, Circulars have to be taken into account.	Oman International Bank	(2009) 313 ITR 128 223 CTR 382 (Bom).
BLOCK ASSESSMENT	158BD	AO assessing person searched must give a categorical finding that searched material pertains to assessee.	Bhajan Das & Bros.	(2009) 119 ITD 76 123 TTT 865 24 DTR 68 (Agra) (TM)
BLOCK ASSESSMENT–	158BB	Where no material was recovered in the course of search, addition cannot be made by the AO while framing block assessment, merely on the statement of a third party independent of the search.	Concorde Capital Management Co. Ltd	(2009) 25 DTR 97 (Del)
BLOCK ASSESSMENT - PENALTY	158BFA	Additions in block assessment having been made on estimate basis, no penalty u/s. 158BFA(2) could be imposed in the absence of any positive finding regarding concealment or suppression of income on the part of the assessee.	Shanti Kumar Chabra	(2009) 121 TTT 985 (JP).
BLOCK ASSESSMENT – AGENT OF NON RESIDENT – BLOCK ASSESSMENT NOT VALID IN THE ABSENCE OF SATISFACTION OF ANY CONDITION MENTIONED IN S. 163(1)	158BD, 163(1)	During the course of search and seizure action at the residential premises of the Assessee it was found that Assessee’s non resident brother was maintaining some bank accounts. As the source of deposits in those banks was not explained assessment order u/s. 158BD was framed treating the Assessee as agent of his brother u/s. 163(1). The CIT(A) set aside the assessment order. Tribunal confirmed the same. Hon’ble Court held that neither assessee had any business connection with his non resident Indian brother, nor any income had come into existence as having been received by non-resident Indian so as to attract provisions of s. 163(1)(c).	Rakeshchander Goel	(2009) 177 Taxman 15 (P&H).
BLOCK ASSESSMENT – COMPUTATION - UNDISCLOSED INCOME – STATEMENT	158BB	In the absence of recovery of any incriminating material during the search conducted in the premises of the assessee group, the statement of third party could not be used against the assessee in proceedings under Chapter XIVB, especially when the statements were recorded behind the back of the assessee.	Bansal High Carbons (P) Ltd.	(2009) 223 CTR 179 (Del).
BLOCK ASSESSMENT – COMPUTATION OF UNDISCLOSED	158BB(4)	In view of expl. (a) to s. 158 BB (4), it is mandatory that only brought forward losses of past	E.K. Lingamurthy and Anr	(2009) 314 ITR 305 222 CTR 1



INCOME VIS-À-VIS SET OFF OF BROUGHT FORWARD LOSSES		year under chapter VI and unabsorbed depreciation u/s. 32(2) are to be excluded while aggregating total income or loss for the block period and set off of inter se losses and losses accruing in any previous year in the block period against the income assessed in other previous year in the block period is not prohibited		19 DTR 99 178 Taxman 116 (SC)
BLOCK ASSESSMENT - DEDUCTION – 80I AND 80IA.	80I, 80IA	As the provisions of s. 158BB, as amended by the Finance Act, 2002, retrospectively w.e.f. 1 st July, 1995, no fault can be found with the impugned order of the Tribunal holding that the assessee is entitled to claim deduction u/s. 80I or s. 80IA in block assessment.	Suman Paper & Boards Ltd.	(2009) 18 DTR 297 314 ITR 119 (Guj).
BLOCK ASSESSMENT – DEFINITION OF THE WORDS ‘OTHER PERSON’ –LAPTOP OF ACCOUNTANT	153C, 158BD	U/s. 153C of the Act, the Income Tax Dept. cannot demand unrestricted access to information on those persons who have no relation to the person who has been subjected to search u/s. 132. In this case, the Dept. seized the laptops of two employees of the petitioner (the petitioner is a renowned firm of auditors) and demanded password for getting access to files of all the clients of the petitioner-even of those persons who had no relation to the person (client of the petitioner) searched. The words ‘a person’ appearing in s. 153C and ‘other person’ appearing in s. 158BD, can only mean such person having dealings or transactions with the person searched.	S.R. Batliboi & Co.	(2009) 181 Taxman (Delhi).
BLOCK ASSESSMENT – ISSUES OF NOTICE	158BC	Where the amount is received by the assessee on sale of plot of land through proper banking channel and the gain on such sale was depicted in her return prior to issue of notice u/s. 158BC of the Act the income could not be treated as unexplained deposit.	Shakuntala Devi	(2009) 23 DTR 238 (Del).
BLOCK ASSESSMENT - LIMITATION	142(2A), 158BE.	Directing special audit without affording reasonable opportunity of being heard to the assessee is merely an irregularity and not an illegality, and in such cases assessment can not be annulled but is required to be restored back to the file of AO for framing an assessment a fresh after giving a reasonable opportunity.	Sushila Milk Specialities (P) Ltd.	(2009) 126 TTT 289 (Del)(SB).
BLOCK ASSESSMENT - LIMITATION	158BD, 158BE	Tribunal found that notice u/s. 158BD dt. 24 th Jan 2002, was despatched to the assessee’s correct address on 28 th Jan 2002, which was served on the assessee on 30 th Jan 2002, and thus last date for the block assessment being 31 st January, 2002, assessment order passed on 5 th Feb., 2004 was barred by limitation.	Jagdamba Marbles Ltd.	(2009) 29 DTR 301 (Del).
BLOCK ASSESSMENT – LIMITATION	158BE	The name and change of the assessee was specifically mentioned along with the other group concern in the warrant of authorization where search was carried out in the premises of the assessee was also subjected to search u/s. 132 and limitation prescribed as per sub-s. (1) of the s. 158BE(1) and not sub-s. (2) thereof applied. Search was finally concluded the assessment order was	Asha Maritime (India) (P) Ltd.	(2009) 25 DTR 249 124 TTT 481 (Mum) (Trib)



		barred by the limitation u/s. 158BE(1).		
BLOCK ASSESSMENT – LIMITATION	158BE	Search action in case of the assessee was concluded on 5-8-2000 and panchnama seizing stock was also prepared on the same day. Thereafter, on 20-9-2000 the authorities had only inspected the seals and again prepared a panchnama. The Hon'ble High Court on these set of facts held that the second panchnama was prepared by the revenue authority to just overcome the limitation period and the block assessment order passed by the AO was barred by limitation.	Plastika Enterprises	(2009) 23 DTR 333 (Bom).
BLOCK ASSESSMENT - LIMITATION – NOTICE	143(2)	When AO does not issue notice u/s. 143(2) within one year from the end of month in which block return is filed, it would not be open to him to start scrutiny assessment proceedings after end of that period.	Aurangabad Holiday Resorts (P) Ltd.	(2009) 118 ITD 1 (Pune).
BLOCK ASSESSMENT - NON-RESIDENT – AGENT	163, 158BD	The assessee was not having any business connection with the non resident Indian brother nor any income came into existence as having been received by the Non resident Indian to attract the provisions of s. 163(1)(c) of the Act and the department has also failed to prove the assessee as a trustee of the non resident Indian so as to attract s. 163(1)(d). Proceedings u/s. 158BD was not valid.	Rakesh Chander Goyal	(2009) 177 Taxman 15 (P&H).
BLOCK ASSESSMENT – NOTICE	143(2), 158BC	Issue of s. 143(2) notice is mandatory for block assessment proceedings. Disclosed items cannot be assessed in block assessment. Circulars are binding on the revenue.	Hotel Blue Moon	(2010) 35 DTR 1 (SC)
BLOCK ASSESSMENT – NOTICE	143(2), 158BC	In case of block assessment if the AO is not inclined to accept the return of undisclosed income filed by the assessee, then the prescribed procedure u/s. 143(2) of the Act is to be followed. Thus, the assessment order passed by the AO without issuing notice u/s. 143(2) of the Act, would be invalid and not merely irregular.	Pawan Gupta & Ors.	(2009) 22 DTR 291 181 Taxman 299 (Del).
BLOCK ASSESSMENT – PENALTY	158BFA(2)	Levy of penalty u/s. 158BFA(2) is not mandatory. Where undisclosed income had been computed on the basis of surrender made by assessee in course of block assessment proceedings and de hors surrender, there was no evidence, which could have been said to have been found as a result of search, “computation“ of undisclosed income by AO in block assessment proceedings could not be construed as a “determination“ of undisclosed income contemplated u/s. 158BC(c) or s. 158BB and no penalty would be imposable u/s. 158BFA(2) in such case.	Harkaran Das Ved Pal	(2009) 177 Taxman 398 222 CTR 438 (Del).
BLOCK ASSESSMENT – PENALTY	158BFA(2) 158B ()	Expression “or any expenses deduction or allowance claimed under this Act, which is found to be false” not being there in s. 158B(b) at the time of filing the return on 31 st May, 2001, penalty u/s. 158BFA(2) could not be imposed on the basis of disallowance of expenditure claimed and rejection of claim of set off of business loss.	Super Metal Industries	(2009) 123 TTJ 23 119 ITD 153 (Mum)(TM).



BLOCK ASSESSMENT – SATISFACTION	158BD	No satisfaction of AO within the meaning of s. 158BD being discernible from the notice, proceedings u/s. 158BD were invalid.	C.S.L. Securities (P) Ltd.	(2008) 15 DTR 318 (Del)(Trib).
BLOCK ASSESSMENT – SATISFACTION – WRONG STATUS	158BD	Where the status of the assessee was incorrectly mentioned in the notice issued u/s. 158BD of the Act and also there was no subjective and independent satisfaction recorded by the AO the notice issued u/s. 158BD of the Act cannot be sustained and is liable to be quashed.	Subhas Chandra Bhaniramka	(2009) 25 DTR 226 (Cal).
BLOCK ASSESSMENT – SEARCH – ESTIMATION	132, 158BC	Block assessment can only be made on the basis of evidence found during search. Where no evidence was found of unaccounted investment addition could not be made on the basis of valuation report of DVO.	Pramod Kumar Gupta	(2010) 320 ITR 408 (Delhi)
BLOCK ASSESSMENT - SEARCH AND SEIZURE	158BA	The assessment in the block period can only be done on the basis of the evidence found as a result of Search.	Ashok Dua	(2009) 177 Taxman 494 (Delhi).
BLOCK ASSESSMENT – SEARCH AND SEIZURE	158BB	In the absence of any defect found out in the books of account, maintained in regular course of business, no addition can be made to the income disclosed by the assessee in its return of income on the basis of discrepancy worked out on estimation of its stock.	K.P. Chandradasan	(2009) 226 CTR 403 (Del)
BLOCK ASSESSMENT – SEARCH AND SEIZURE	158BB	Income returned through the revised return and belated return filed after the date of search cannot be excluded in the computation of income for block period.	Utkal Alloys Ltd.	(2009) 226 CTR 676 (Ori).
BLOCK ASSESSMENT – SEARCH AND SEIZURE	158BD, 132	For invoking s. 158BD for the assessment of any person satisfaction must be recorded by the AO and Books of accounts, documents or assets seized or requisitioned to be handed over to the AO having jurisdiction over such person.	Dawn View Farms (P) Ltd.	(2009) 212 Taxation 199 178 Taxman 15 (2008) 15 DTR 83 (Del).
BLOCK ASSESSMENT - SEARCH AND SEIZURE - SEARCH WARRANT ON DEAD PERSON	132, 158BC	Search warrant issued in the name of dead person, search held to be invalid and assessment based on search also invalid. Editorial Note:- SLP rejected (2009) 313 ITR 29 (ST)	Rakesh Kumar	(2009) 313 ITR 305 (P&H).
BLOCK ASSESSMENT - SEARCH AND SEIZURE - UNDISCLOSED INCOME - ADMISSION AS PER STATEMENT	132(4)	No addition can be made only on the basis of admission in statement u/s. 132(4), however, any expenses deduction or allowance claimed under the Act which is found to be false and admitted so by the assessee can be added as undisclosed income. As the AO has failed to bring any evidence in support of the addition, the additions were deleted.	Contech Transport Services (P) Ltd.	(2009) 19 DTR 191 (Mum)(Trib).
BLOCK ASSESSMENT – TRANSACTIONS DISCLOSED IN RETURNS AND SUBJECT TO REGULAR ASSESSMENT	158BC	Bombay High Court in ITA No 748 of 2007 dt. 30-6-2008, following the judgment CIT vs. Vikram A. Doshi (2002) 256 ITR 129 (Bom) refused to refer the questions relating to transactions which it could not be said to give rise to undisclosed income to be assessed in block assessment as they had been	Nirmal Bang Securities P. Ltd.	S.L.P. (C) No. 6221 of 2009 dt 2-3-2009 (2009) 312 ITR 7 (St).



		disclosed in the returns and were the subject matter of regular assessment.		
BLOCK ASSESSMENT – UNDISCLOSED INCOME	158B	Where the assessee had maintained regular books of account and the returns of income were filed regularly before the date of search and no incriminating documents were found during the course of search addition on account of peak credit of farmer's account was beyond the scope of block assessment and liable to be deleted.	Rajendrakumar	(2009) 24 DTR 191 (MP).
BLOCK ASSESSMENT - VALIDITY – ISSUE OF NOTICE	143(2), 158BD & 292BB	Notice issued u/s. 143(2) having not been issued and served on assessee within a period of one year from the date of filing of return u/s. 158BD, Block assessment u/s. 158BD was null and void.	Jayprakash J. Mangtani	(2009) 22 DTR 320 (Ahd)(Trib).
BLOCK ASSESSMENT- COMPUTATION OF UNDISCLOSED INCOME	158BB	Income returned through the revised return and belated return filed after the date of search cannot be excluded in the computation of income for block period.	K.P. Chandrsana	(2009) 29 DTR 236 (Ker).
BLOCK ASSESSMENT- COMPUTATION OF UNDISCLOSED INCOME	158BB.	Loans which were shown by the assessee in the balance sheet filed with the return for an earlier year cannot be treated as bogus and addition cannot be made merely because interest has not been paid. Estimation by Tehsildar cannot be basis to make addition as income from undisclosed source.	Subhash Verma	(2009) 125 TTJ 865 (Del)(SB).
BLOCK ASSESSMENT- FIRM AND PARTNERS	158BB(1)	In view of cl. (2A) of s. 10 and proviso to cl. (b) of Explanation to sub-s. 1 of s. 158BB, both disclosed and undisclosed income of the firm and not in the hands of partners.	K.T. Joseph	(2009) 30 DTR 156 (Coch)(TM)(Trib).
BLOCK ASSESSMENT- LIMITATION	158BE.	Last valid panchnama has been drawn on August 7, 1996, the date on which seizure was made and therefore, the assessment proceedings ought to have been completed before August 30, 1997. The Tribunal held that the last Panchanama Dt. October 10, 1996, drawn after conclusion of search was not valid as no seizure was made on that date. (ITA no 904 of 2007 Dt. 1-7-2008 (Kar). Editorial: See: (a) S. K. Katyal (2008) 16 DTR 285 (Del.) (b) CIT Vs. Plastika Enterprises (2009) 23 DTR 333 (Bom.) (c) Nandlal M. Gandhi Vs. ACIT (2008) 115 ITD 1 (Mum)(TM).	Children's Education Society	(2009) 319 ITR 2 (st).
BLOCK ASSESSMENT- UNDISCLOSED INCOME - DUE DATE OF FILING OF	158BB	Mere fact that time for filing return has not expired is not enough to hold that income disclosed after search can not be treated as undisclosed.	Rajesh Sayal	(2009) 185 Taxman 369 (Punj & Har).



RETURN				
BLOCK OF ASSET - BALANCING CHARGE IS NOT CHARGEABLE TO TAX	41(1), 41(2), 50	<p>The assessee had sold soft drink bottles and crates on which depreciation was claimed @ 100 % as the cost of each item was less than Rs. 5000. The Supreme Court held that such receipts are not assessable u/s. 41(1) as it would have been taxable u/s. 41(2) which was omitted by Finance Act 1988.</p> <p>The Supreme Court held that bottles and crates purchased before 31st March, 1995 would not be assessable u/s. 50 as they do not form part of block of assets in view of the proviso to s. 32(1)(ii), however bottles and crates purchased later would be assessable u/s. 50 as the proviso was deleted.</p>	Nectar Beverages P. Ltd.	(2009) 25 DTR 218 182 Taxam 319 224 CTR 433 314 ITR 314 (SC)
BLOCK OF ASSETS	2(ii), 43(6)(c)	When block of asset is sold, the block of assets stands reduced only by moneys payable on account of sale of the asset and not by the fair market value of the asset sold.	Cable Corporation of India Ltd.	ITA No. 5592/Mum/2002 dt. 29-10-2009 Bench E. 392 (2009) 41 BCAJ (Jan)
BOOK PROFIT	115 J	Interest u/ss. 234B and 234C is not chargeable when the income of the assessee is taxed under the provisions of s. 115J of the Act.	Nilgiri Tea Estate Ltd.	(2009) 26 DTR 164 (Ker).
BOOK PROFIT	115JB, 80HHC	In a case of MAT assessment, deduction u/s. 80HHC is to be worked out on the basis of the adjusted book profit u/s. 115JB.	Ambika Cotton Mills Ltd. & Ors.	(2010) 33 DTR 183 (Mad.)
BOOK PROFIT – COMPANY	80HHC, 115JB	<p>For the purpose of calculating book profit u/s. 115JB under explanation 1 sub-cl. (iv) the export profits to be excluded from the book profits would be the export profits allowed as a deduction u/s. 80HHC after restricting the deduction as per the provisions of sub-s. (1B) of s. 80HHC and not the export profits calculated as per sub-s. (3) and 3 (3A) of s. 80HHC before applying the restriction contained in sub-s. (1B) of s. 80HHC.</p> <p>Editorial Note: Special Bench Judgment in Dy. CIT vs. Syncome Formulations (I) Ltd. (2007) 106 ITD 193 (Mum.) is overruled.</p>	Ajanta Pharma Ltd.	(2009) 223 CTR 441 23 DTR 1 180 Taxam 494 318 ITR 252.(Bom).
BOOK PROFIT - COMPANY - MUTUAL CONCERN	115JB	When the income is exempt under the principle of mutuality, said income can not be brought to tax under the provisions of s. 115JB.	Delhi Gymkhana Club Ltd.	(2010) 35 SOT 335 (Delhi).
BOOK PROFIT – COMPANY.	115J	Where the revised accounts of the assessee–company were audited by a chartered accountant, the assessing officer has no option but to proceed to determine the book profit u/s. 115J of the Act without disturbing the said accounts in any manner. The Court further held that the AO was not right in holding that for the purpose of computing book profit u/s. 115J, only that book profit which is approved at the annual general meeting of the shareholders of the company had to be considered.	Arvind Mills Ltd.	(2009) 25 DTR 104 (Guj).
BOOK PROFIT – MINIMUM	115JA	Stock borrowing charges not debited to P&L Account as required under Schedule VI of the	Cyril Traders Pvt. Ltd.	ITA No. 5297/Mum/2004, A.Y. 1998-1999, dt. 28-7-



ALTERNATE TAX		Companies Act can be claimed as revenue expenditure even by an assessee who is bound to follow the Accounting Standards.		2009 BCAJ p. 43, Vol. 41A, Part 6, September 2009
BOOK PROFIT – TAX BASED ON BOOK PROFIT	115JB(2), Expln. 1 cl. (b)	Where net profit is less than 10 percent, 10 percent is to be taken as book profit and amount is to be carried to reserve is to be added. Tariff consisting of advance against depreciation is “income received in advance” and not to be added to net profit to ascertain book profit.	National Hydroelectric Power Corporation Ltd.	(2010) 320 ITR 374 (SC)
BOOK PROFIT – TAX CREDIT	115JA	While computing tax liability u/s 115JA credit for tax paid in foreign country is allowable.	L & T Ltd.	ITA No. 4499/Mum/2008, dt. 22-7-2009 BCAJ p. 46, Vol. 41A, Part 6, September 2009
BOOK PROFITS – DEPRECIATION -COMPANY	115J	MAT companies can provide depreciation as per Income-tax Rules while computing s. 115J book profits referred to Larger Bench.	Dynamic Orthopedics	www.itatonline.org . (2010) 35 DTR 81 (SC).
BUSINESS DISALLOWANCE - ACTUAL PAYMENT	43B	Under Explanation 3C, conversion of interest amount in to loan would not be deemed to be regarded as “actually paid” amount within the meaning of s. 43B.	Eicher Motors Limited	(2009) 315 ITR 312 (MP).
BUSINESS DISALLOWANCE - ACTUAL PAYMENT - DELETION OF 2ND PROVISO TO S. 43B OPERATES RETROSPECTIVELY	43B	The deletion of the second proviso to s. 43B, and the amendment to the first proviso, by the Finance Act, 2003 was to overcome implementation problems. Consequently, the amendments, though made applicable by Parliament only with effect from 1.4.2004, were curative in nature and would apply retrospectively w.e.f. 1.4.1988. Note: Pamvi Tissues 313 ITR 137 (Bom) is impliedly overruled while Nexus Computer 313 ITR 144 (Mad) & P.M. Electronics 313 ITR 161 (Delhi) are impliedly approved. See also: Saurashtra Kutch 305 ITR 227 (SC): A view contrary to the judgment of jurisdictional Court or of the Supreme Court is a “mistake apparent from the record” irrespective of when the decision was rendered and a rectification application can be filed.	Alom Extrusions Ltd.	(2009) 319 ITR 306 185 Taxman 416 (SC).
BUSINESS DISALLOWANCE – REMUNERATION- EXCESSIVE OR UNREASONABLE	40(A)(2)	For the purpose of applying the provisions of s. 40A(2) the AO is required to make inquiry to ascertain whether payment is excessive or unreasonable having regard to fair market value of services.	Jagadamba Rollers Mill Ltd.	(2009) 117 ITD 260 (Nag)(TM).
BUSINESS DISALLOWANCE - SALARY PAYABLE OUTSIDE INDIA	40(A)(iii) r.w.s. 200(1)	Mere delay in payment of tax after deduction at source in terms of s. 200(1) cannot be considered as a criteria to attract rigors of provisions of sub clause (iii) of clause (a) of s. 40, so long as taxes are paid or deducted under chapter XVII-B. In the amended sub-clause (i) of s. 40(a), it is categorily stated that the deduction would be	Dolphin Drilling Ltd.	(2009) 28 SOT 141 19 DTR 531 (Del)(Trib).



		allowed only when tax has been deducted from such income or after deduction has been paid before the expiry of the time prescribed under sub-s. (1) of s. 200, where as the amendment to sub-clause (iii) in regard to deduction of tax from salary has not been so worded, where it is merely provided that "if tax has not been paid thereon nor deducted there from under Chapter XVII-B of the Act". On comparison of the provisions contained in s. 40(a)(iii) with s. 40(a)(i) it would be noticed that sub-clause (iii) does not mention that the deposit has to be made before the expiry of the time prescribed under sub-s. (1) of s. 200 as mentioned in sub clause (i) of the s. 40(a).		
BUSINESS EXPENDITURE	37(1)	The assessee's claim of deduction of certain expenses was allowed by the Tribunal in earlier years and the revenue authorities accepted the order of the Tribunal. In subsequent year where the Tribunal allowed the claim of the assessee on identical facts, it is not open for the Revenue authorities to take a contrary stand in the year under consideration.	Dipti Textile Industries	(2009) 25 DTR 46 (Bom.)
BUSINESS EXPENDITURE – TERMINATION OF LEASE	37	Amount paid to landlord for premature termination of lease is an expenditure on account of commercial expediency and hence entitled for deduction u/s. 37.	Microsoft Corporation of India	(2009) 210 Taxation 161 (Del).
BUSINESS EXPENDITURE - ABANDONED PROJECT	37(1)	Assessee engaged in the business of exploration and production of oil is entitled to deduction of expenditure pertaining to abandoned project.	ONGC Videsh Ltd.	(2010) 33 DTR 22 (Del)(Trib)
BUSINESS EXPENDITURE – ACTUAL PAYMENT	36(1)(va) & 43B	Deletion of second proviso to s. 43B, by way of amendment by Finance Act, 2003, is retrospective in nature. Amounts paid by employer towards provident fund contributions after due date prescribed under Employees, Provident Fund Act but before due date for furnishing of return of income are allowable in view of s. 43B r.w.s. 36(1)(va).	P.M. Electronics Ltd.	(2009) 177 Taxman 1 313 ITR 161 (Delhi).
BUSINESS EXPENDITURE – AD-HOC DISALLOWANCE - TELEPHONE, VEHICLE	37	Ad-hoc disallowance of expenditure without any reason is not proper, further, there is no element of personal user out of telephone expenses, vehicle expenses, car insurance expenses and office expenses of the company.	Rajat Tradecom India (P) Ltd.	(2009) 120 ITD 48 23 DTR 311 (Indore)
BUSINESS EXPENDITURE – ADMINISTRATIVE EXPENSES	37	Administrative Expenses incurred in connection with the modernization and expansion of the assessee's existing units is allowable as revenue expenditure even though the assessee had capitalized these expenses in its books of accounts.	Triveni Engineering & Industries Ltd.	(2009) 19 DTR 274 (Del)
BUSINESS EXPENDITURE - ADVERTISEMENT – SALES PROMOTION - BRAND BUILDING	37	By incurring expenditure on advertisement and sales promotion, assessee had not acquired any fixed capital asset, but these expenditure were incurred for earning better profits and for facilitating assessee's operation of providing cellular mobile services hence allowable as	Spice Communications Ltd.	(2010) 35 SOT 78 (Delhi)



		business expenditure.		
BUSINESS EXPENDITURE – ADVICE FOR 7 YEARS – REVENUE EXPENDITURE		The Hon'ble Court held the expenditure as revenue on following reasons (i) under agreement assessee had acquired only 'access' to technical information, that is, know-how related to process of manufacture, which was not related to any secret process or patent rights or even right to use a trademark or trade name under agreement; (ii) there was no transfer of ownership with respect to process and know-how in favour of assessee; and (iii) under a/n agreement the licensor was obliged to give advice only for a period of 7 years, payment made by assessee to it would be treated as revenue expenditure.	J.K. Synthetics Ltd.	(2009) 176 Taxman 355 309 ITR 371 (Del).
BUSINESS EXPENDITURE - BIRI BINDING CHARGES DEDUCTION OF TAX AT SOURCE.	40(a)(ia), 194H	Payment of Biri binding charges made through Munshis who are part of the labourers can not be considered as commission in terms in Explan (i) to s. 194H, therefore the said payment could not be disallowed u/s. 40(a)(ia).	Jahangir Biri Factory (P) Ltd.	(2009) 126 TTJ 567 (Kol)
BUSINESS EXPENDITURE – BRAND PROMOTION	37	Expenditure on brand promotion and brand building classified in the books of account as deferred revenue expenditure was allowed as revenue expenditure.	Raj Oil Mills Ltd.	ITA No. 5781/M/2007, AY 2003-04, dt. 27-5-2009 BCAJ p. 31, Vol. 41-A, Part 5, August, 2009.
BUSINESS EXPENDITURE – CAPITAL OR REVENUE – CONSULTATION CHARGES	37	Consultation charges paid by the assessee in connection with the expansion of assessee's existing project were held to be allowable as revenue expenditure.	Jyoti Ltd.	(2009) 24 DTR 177 (Guj.)
BUSINESS EXPENDITURE – CAPITAL OR REVENUE – EXPENDITURE INCURRED ON DEVELOPMENT OF WEBSITE IS REVENUE EXPENDITURE	37	Expenditure on website would not change the fixed capital of an assessee, even though website might provide enduring benefit to Assessee, expenditure incurred has to be regarded as revenue expenditure.	Indian Visit Com. (P) Limited	(2009) 176 Taxman 164 (Del).
BUSINESS EXPENDITURE - COMMISSION PAID TO DIRECTOR. DEDUCTION OF TAX AT SOURCE.	40(a)(ia), 194H, 194J	Commission paid to directors as per terms of employment is for the works done in their capacity as whole time directors is to be treated as incentive in addition to salary etc, therefore same can not be disallowed u/s. 40(a)(ia), neither s. 194H or 194J is applicable.	Jahangir Biri Factory (P) Ltd.	(2009) 126 TTJ 567 (Kol).
BUSINESS EXPENDITURE - COMMUNITY ASSISTANCE PROGRAMME	37	Expenditure incurred by the assessee on community assistance programme and the welfare measures undertaken in the vicinity of the manufacturing unit which also benefited its employees is allowable as business expenditure.	Madura Coats Ltd.	(2009) 24 DTR 24 (Mad)



BUSINESS EXPENDITURE – CONTRIBUTION TO DEVELOPMENT OF MODEL VILLAGE	37	Amount paid by assessee financial corporation for the development of model village in Mysore District under AG's Mysore Zilla Panchayath was to promote the business of the assessee and therefore deduction was allowable.	Karnataka Financial Corporation	(2010) 33 DTR 145 (Kar.)
BUSINESS EXPENDITURE – CONTRIBUTION TOWARDS PROVIDENT FUND	36(1)(va)	Employer's contribution towards provident fund though paid beyond the due date but before the end of the relevant financial year is allowable deduction.	Polyplex Corporation Ltd.	(2009) 176 Taxman 57 122 TTJ 949 (Delhi).
BUSINESS EXPENDITURE – CORPORATE MEMBERSHIP FEE	37	Admission fees paid towards corporate membership of a club is allowable as expenditure for the purpose of assessee's business.	Samtel Color Ltd.	(2009) 19 DTR 295 (Del)
BUSINESS EXPENDITURE - COST OF PRODUCTION OF TV SERIAL – RULE 9A OF INCOME TAX RULES.	Rule 9A	Feature film which was exclusively for telecast on TV Rule 9A will be applicable as the film was released for exhibition for less than 90 days.	Vieshesh Films (P) Ltd.	(2009) 126 TTJ 271 (Mumbai).
BUSINESS EXPENDITURE - DEDUCTION - ACTUAL PAYMENT	43B	Where neither such deduction is claimed nor charge is made to profit and loss account, no disallowance can be made u/s. 43B.	Dynavision Ltd.	(2009) 121 ITD 461 (Chennai)(TM).
BUSINESS EXPENDITURE – DEDUCTION- EXEMPTED INCOME.	37 14A	S. 14A applies to all heads of income and gains at disallowing expenditure incurred in relation to income not forming part of total income even though such expenditure may be allowable under any other provision e.g. 36(1)(iii). Provisions of s. 14A are applicable with respect of dividend income earned by the assessee engaged in the business of dealing in shares and securities, on the shares held as stock in trade. Provisions of sub-s. (2) and (3) of s. 14A are procedural in nature, hence, applicable retrospectively.	Daga Capital Management (P) Ltd.	(2008) 15 DTR 68 26 SOT 603 119 TTJ 289 117 ITD 169(Mum) (SB)
BUSINESS EXPENDITURE – DEFERRED REVENUE EXPENDITURE	37	Deferred revenue expenditure to the extent of 1/10 th of total expenditure having been allowed to the assessee in summary assessments as also scrutiny assessments for other assessment years accepting the method of accounting followed by assessee, same could not be disallowed in assessment year in question. Editorial Note: See judgment of Mumbai Tribunal in Crystal Audio Ltd. vs. ITO, ITA No. 1303/Mum/2002 Bench 'J' dt. 31-3-2006. (Asst. Year 1995-96)	Sportsfield Amusments	(2009) 122 TTJ 572 (Mum.)
BUSINESS EXPENDITURE – DEVELOPMENT OF WEBSITE	37	Business expenses incurred for development of website to promote business activities, and display information and products is allowable as Revenue Expenditure	Polyplex Corp. Ltd.	(2009) 176 Taxman 57 122 TTJ 949 (Delhi).



		Editorial Note:- Refer CIT vs. Indian Visit Com (P) Ltd (2008) 13 DTR 258 (Del.)		
BUSINESS EXPENDITURE - DISALLOWANCE - BOTTLING FEE	43B	Furnishing of bank guarantee is not actual payment of tax or duty as required u/s. 43B of the Income-tax Act. Bottling fee payable by the assessee under the Rajasthan Excise Act, 1950 and rules framed there under receivable by the State for parting with its exclusive privilege to deal in portable liquor, is not in the nature of any sum payable by way of tax, duty cess and, therefore it cannot be disallowance u/s. 43B.	McDowell & Co. Ltd.	(2009) 23 DTR 122 314 ITR 167 180 Taxman 514 (SC).
BUSINESS EXPENDITURE - DISALLOWANCE - DEDUCTION OF TAX AT SOURCE	40(a)(iii) 192.	Overseas maintenance allowance paid by assessee by way of reimbursement of maintenance expenses incurred by employees deputed abroad was not part of salary, but covered by Rule 2BB(1)(b), hence, could not be disallowed u/s. 40(a)(iii) for non deduction of tax at source.	Information Architects	(2009) 123 TTJ 35 (Mum).
BUSINESS EXPENDITURE - DISALLOWANCE - INTEREST - CONSTITUTIONAL VALIDITY DEDUCTION OF TAX AT SOURCE.	40(a)(ia), 194C	S. 40(a)(ia), is constitutionally valid and there is no arbitrariness, unreasonableness or discrimination in said provision.	Tube Investments of India Ltd.	(2009) 185 Taxman 438 (Mad).
BUSINESS EXPENDITURE - DISALLOWANCE - TDS - DOMAIN REGISTRATION - DEDUCTION OF TAX AT SOURCE	40(a)(1), 195(2)	Expenditure for Domain registration and server charges for hosting websites are not in the nature of interest or Royalties or for technical services or such services chargeable to tax in India. Payment made out side India deduction of tax at source not required.	Millenium Infocom Technologies Ltd.	(2009) 309 ITR 18 (AT) 117 ITD 114 (Delhi)
BUSINESS EXPENDITURE - DISALLOWANCE- WORKS CONTRACT. DEDUCTION OF TAX AT SOURCE.	40(a)(ia) 194C	Supply of outsourced manufactured goods by contract manufacturers constituted outright sale and not contract of work within the scope of s. 194C, hence assessee was not liable to deduct tax at source from the purchase price of goods paid by assessee to contract manufacturers, therefore, such payment could not be disallowed by invoking s. 40(a)(ia)	Tureg Marketing (P) Ltd.	(2009) 122 TTJ 343 (Del). (2009) 28 SOT 1 (Del).
BUSINESS EXPENDITURE - DISCOUNTING CHARGES ON SALE BILLS DEDUCTION OF TAX AT SOURCE.	2(28A), 40(a)(i), 195	Discounting charges on discounting bills of exchange do not amount to interest and therefore assessee was not under obligation to deduct tax at source u/s. 195 and hence, the discounting charges can not be disallowed by invoking s. 40(a)(i).	Cargill Global Trading (I) Ltd.	(2009) 126 TTJ 516 31 DTR 289 (Del) (Trib).
BUSINESS EXPENDITURE - DORMANCY AND	37	Assessee maintaining office, retaining staff for export business though export sales substantially	Anita Jain	(2010) 214 Taxation 180 (Del)



LULL OF BUSINESS		gone down. It was a case of business activities and not closure of business. Hence the expenditure was allowable.		
BUSINESS EXPENDITURE – EMPLOYEES CONTRIBUTION - PF	36 (I)(va) 43B	Even employees' contribution to PF paid before due date of filing ROI is allowable u/s. 43B.	Aimil Limited	(2010) 35 DTR 68 (Delhi)
BUSINESS EXPENDITURE – EXCESSIVE AND UNREASONABLE PAYMENTS	37	Assessee apart from paying handling charges at the rate of 9.5 per cent to its sister concerns had paid handling charges at the same rate to other agents also. Revenue had allowed similar rate in earlier years. Sister concerns paying tax at a higher rate. Hence it is not a case of evasion of tax. Under Board Cir. No. 6-P dated July 1968, no disallowance was to be made u/s. 40A(2) in respect of payment made to the relatives and sister concern where there was no attempt to evade tax.	Indo Saudi Services (Travel) P. Ltd.	(2009) 310 ITR 306 (Bom).
BUSINESS EXPENDITURE – EXPENDITURE ON COMPUTER SOFTWARE	37	Expenditure on computer software is capital expenditure.	Avaya Global Connect Ltd.	(2009) 122 TTJ 300 (Mum).
BUSINESS EXPENDITURE - EXPENSES INCURRED FOR KEEPING THE BUSINESS ALIVE	37	Assessee is barred from doing business by SEBI till further orders. Assessee contesting order. Expenses incurred in keeping business alive deductible.	KNP Securities P. Ltd.	(2010) I ITR 130 33 DTR 210 (Mumbai)(Trib)
BUSINESS EXPENDITURE – EXPENSES ON ISSUE OF DEBENTURES	37	Expenditure incurred on issue of debentures, whether convertible or non convertible is allowable as revenue expenditure. S.L.P. CC No. 10548/2009 dated 11-08-2009 filed by the department was rejected.	Secure Meters Ltd.	(2009) 221 CTR 405 (2008) 16 DTR 53 (Raj).
BUSINESS EXPENDITURE – EXPLANATION	37	Where the assessee instead of distributing free sample of liquor for promoting its sale to the defence establishment used to reimburse the payment made by the defence establishment to the CSD stores for the purchase of liquor, the amount of such reimbursement was held to be a deductible expenditure as the same was neither against the public policy nor prohibited under the law.	Brihan Maharashtra Sugar Syndicate Ltd.	(2009) 28 DTR 265 182 Taxman 236 (Bom).
BUSINESS EXPENDITURE – FAIR MARKET VALUE	40A(2)	Where the service rendered by the related concern was specific and specialized in nature and the AO was not able to establish that the payment was excessive or unreasonable having regard to the fair market value of the service, no disallowance u/s. 40A(2) of the Act was called for.	Forbes Tea Brokers	(2009) 27 DTR 113 (Mad).
BUSINESS EXPENDITURE - FEASIBILITY	37.	If expenditure incurred for preparation of feasibility report of a new project, is in respect of same business which is already carried on by assessee, even if it is foe expansion of business, namely to	Priya Village Road Shows Ltd.	(2009) 185 Taxman 44 (Delhi).



REPORT OF NEW PROJECT		start a new unit which is same as earlier business, and there is unity of control and a common fund such expenditure is to be treated as revenue expenditure.		
BUSINESS EXPENDITURE - FILM PRODUCTION	37	Expenditure incurred by assessee on film production by way of advertisement for marketing of products manufactured by it was allowable as revenue expenditure, in as much as it was in respect of promoting ongoing products of assessee.	Geoffrey Manners & Co. Ltd.	(2009) 180 Taxman 87 19 DTR 249 (Bom)
BUSINESS EXPENDITURE - FOREIGN EXCHANGE FLUCTUATION LOSS – ALLOWABLE	37	Foreign Exchange fluctuation losses are allowable on accrual basis Editorial Note – The judgment of the ITAT Special Bench in ONGC vs. ITO 83 ITD 151 has the unique distinction of being <i>affirmed</i> by the Delhi High Court in Woodward Governor 294 ITR 451 and being <i>reversed</i> (after being termed “ perverse ”) by the Uttaranchal High Court in CIT vs. ONGC 301 ITR 415. With the present verdict of the apex court, the judgment of the Special Bench stands approved and that of the Uttaranchal High stands impliedly overruled	Woodward Governor	(2009) 21 DTR 106 179 Taxman 326 223 CTR 1 312 ITR 254 (SC)
BUSINESS EXPENDITURE – FORESEEABLE LOSSES	37	In case of an assessee following mercantile system and “percentage completion method” deduction is allowable in respect of “foreseeable losses” on incomplete projects in respect of which a major part of the work was not completed provided that the same is calculated in accordance with Accounting Standard – 7.	Jacobs Engineering India Pvt. Ltd.	ITA Nos. 335/Mum/2007 & 336/Mum/2007, A.Ys. 2002-03 & 2003-04, dt. 26-5-2009 BCAJ p.31, Vol – 41A, Part 5, August 2009.
BUSINESS EXPENDITURE – GENUINENESS	37	Where the assessee had made payments for purchase of raw material by account payee cheques and the same were found to be credited into the bank accounts of respective parties, the payments made to these parties cannot be disallowed merely because summons issued upon these parties after the lapse of a considerable time could not be served upon them at the given address. The Court further observed that as the bank statements of the parties to whom the payments were made by the assessee were available with the AO, he could have made endeavour to serve summons to these parties on the address given to the banks and verified the fact of payments.	Hi Lux Automotive (P) Ltd.	(2009) 23 DTR 385 (Del).
BUSINESS EXPENDITURE – INCENTIVE BONUS IS DEDUCTIBLE EXPENDITURE	37	The production incentive bonus is liable to be deducted while computing business income, but it would be allowed only when payment of bonus is made in assessment year in question.	Kisan Sahakari Chini Mills Ltd.	(2009) 176 Taxman 265 (Uttarakhand).
BUSINESS EXPENDITURE – INTEREST	36(1)(iii)	Interest payable by the assessee on borrowed funds for purchasing shares both by way of investment as well as stock in trade is allowable as deduction u/s. 36(1)(iii) of the Act. The Court also held that for the purpose of claiming deduction u/s. 36(1)(iii) of the Act the object of the loan is irrelevant.	Srishti Securities (P) Ltd.	(2009) 28 DTR 172 183 Taxman 159 (Bom).



BUSINESS EXPENDITURE – INTEREST	40A(2)	Where the interest paid by assessee to close relative and associate concern is not more than the rate at which interest was paid to other creditors the interest so paid cannot be disallowed by invoking the provisions of s. 40A(2).	Amrit Soap Co.	(2009) 17 DTR 350 (P&H).
BUSINESS EXPENDITURE – INTEREST ON BORROWED FUNDS	36(1)(iii)	Where an assessee has his own funds as well as borrowed funds, a presumption can be made that the advances for non-business purposes have been made out of the own funds and that the borrowed funds have not been used for this purpose.	Reliance Utilities & Power Ltd.	(2009) 313 ITR 340 (Bom).
BUSINESS EXPENDITURE - INTEREST ON DEEP DISCOUNT BONDS - MERCANTILE SYSTEM OF ACCOUNTING	36(I)(iii), 43B.	Interest accrued on deep Discount Bonds, though payable on maturity on some later date was in view of mercantile system of accounting followed by assessee, there being no loan or advance or borrowing by assessee, s. 43B, was not allowable.	Gujarat Toll Road Investment Co. Ltd.	(2009) 126 TTJ 262 (Ahd).
BUSINESS EXPENDITURE – INTEREST PRIOR PERIOD	37, 145	Assessee company engaged in business of land development paid interest as per resolution Dt. 8-9-2002 in the year of non-materialization of terms of Agreement Dt. 13-6-1997. Held AO's action denying deduction of interest as prior period expenses was not justified, and Assessee's claim was admissible u/s. 145, as the claim of deduction of Interest had actually accrued / capitalized and ascertained in the year under consideration on non-materialization of terms viz. approval being rejected.	Urban Improvement Co. (P) Ltd.	(2009) 177 Taxman 104 (Delhi).
BUSINESS EXPENDITURE - KEYMAN INSURANCE	37	Premium paid by firm in respect of insurance policy of partners under Keyman Insurance Policy is an allowable deduction u/s. 37(1).	Modi Motors	(2009) 27 SOT 476 126 TTJ 495 31 DTR347 (Mum).
BUSINESS EXPENDITURE - LABOUR CHARGES TO LABOUR SARDARS	40(a)(ia)	Labour sardars could not be called labour contractors, within the meaning of s. 194C(2), hence provisions of s. 40(a)(ia), can not be made applicable.	Samanwaya	(2009) 34 SOT 332 (Kol).
BUSINESS EXPENDITURE – LABOURERS OR WORKERS	37	Payments made to workers through labourers or worker's union. The said expenses incurred during the course of business as per trade practice.	Konkan Marine Agency	(2009) 313 ITR 308 (Kar).
BUSINESS EXPENDITURE – LUXURY TAX	37	Payments made towards luxury tax and not penalty is allowable as deduction.	RDB Industries Ltd.	(2009) 120 TTJ 107 (Kol).
BUSINESS EXPENDITURE – MARKET SURVEY	37, 35D	Expenditure on study of organizational set-up, Report on reorganization of core business and for improving profitability / market share. Expenditure is not covered by s. 35D as no technical know-how is obtained. Expenditure is deductible u/s. 37. It is not covered under sub-s. (2)(a)(iii) of s. 35D since the said subsection covers only those expenses which are for conducting market survey or any other survey necessary for the business of the	Majestic Auto Ltd.	(2009) 212 Taxation 97 (P&H)



		assessee.		
BUSINESS EXPENDITURE – NEW MODEL CAR	37	Expenditure incurred on launching of a new model of car is a revenue expenditure.	Premier Ltd.	ITA No. 2091/Mum/2008, dt. 30-6-2009 BCAJ P. 42, Vol. 41A, Part 6, September, 2009
BUSINESS EXPENDITURE – PAYMENTS TOWARDS TENDER FEE AND CONSULTANCY CHARGES	37	Where assessee is already in business, payments made for tender fee and consultancy charges for establishing captive power plant are allowable revenue expenditure.	Polyplex Corporation Ltd.	(2009) 176 Taxman 57 122 TITJ 949 (Delhi).
BUSINESS EXPENDITURE – PENALTY	37	Penalty paid by assessee a share broker, for excess utilization limits comparable to it for doing trade of its clients at a particular time was allowable u/s. 37(1) of the Income-tax Act.	VRM Share Broking (P) Ltd.	(2009) 27 SOT 469 (Mum).
BUSINESS EXPENDITURE – PENALTY – FINE	37	Penalty, fines, etc paid by the assessee to State Electricity Board for violating power regulation (drawing extra load in peak hours) was allowable deduction u/s. 37(1) of the Act. The Court further observed that if penalty is not for deliberate violation of law the same should be allowed as deduction.	Hero Cycles Ltd.	(2009) 17 DTR 281 (P&H).
BUSINESS EXPENDITURE – PENALTY – FINE - SEBI	37	Payment, made under SEBI Regulation scheme, 2002 for failure to make disclosure as required under SEBI (Substantial Acquisition of shares and Takeovers) Regulations 1997 could not be treated as penalty as it is a payment for regularizing the default committed hence such payment can not be disallowed by invoking explanation to s. 37(1).	Kaira Can Company Ltd.	(2009) 32 DTR 485 (Mumbai)(Trib)
BUSINESS EXPENDITURE – PRIOR PERIOD EXPENSES	37, 145	During the year the Assessee cancelled the MOU and refunded the amounts received under MOU along with interest as per the terms of the MOU. The AO disallowed the interest paid for the period covering earlier years on the ground that it was prior period expense. Held that the liability to pay interest had accrued in the year under consideration when the resolution was passed and not prior to that. The liability under consideration was contractual liability and was crystallized and ascertained only when the decision to refund the earnest money along with interest was taken and hence the deduction is allowable.	Urban Improvement Co. (P) Ltd.	ITA No. 3246/Mum/2006, Bench – D, A.Y. 2003–04, dt. 5-9-2008 BCAJ p. 667, Vol. 40-B, Part 5, February 2009.
BUSINESS EXPENDITURE – PROVISION FOR PAY	37	Provision for pay revision based on negotiations with trade unions, as per directions by State Government is allowable as deduction, as liability for pay revision arose, at that point of time though the actual quantification was after approval of MOU by Government of Kerala.	Travancore Titanium Products Ltd.	176 Taxman 124 (Cochin).
BUSINESS EXPENDITURE -	37	Expenditure incurred on Vishwakarma Puja by a company cannot be treated as expenditure wholly and exclusively for the purposes of business of the company, and it cannot be allowed any deduction	Hira Ferro Alloys Ltd.	(2009) 31 DTR 20 (Chhattisgarh).



PUJA EXPENSES		u/s. 37(1) towards such expenditure.		
BUSINESS EXPENDITURE - REFUNDABLE DEPOSITS WITH STOCK EXCHANGE	37	Refundable deposits placed with stock exchange can not be allowed as deduction u/s. 37.	Khandwala Finance Ltd.	(2010) 122 ITD 111 (Mum)
BUSINESS EXPENDITURE – REIMBURSEMENT	37	Reimbursement of expenditure incurred in running the school is allowable as business expenditure.	Tata International Ltd.	ITAT 'I' Bench, Mumbai. ITAT No. 5591/M/2005 dt. 11/9/2009, Source : BCAJ Vol. 41-B Part 2 Nov. 2009 Pg. 21
BUSINESS EXPENDITURE - REIMBURSEMENT OF EXPENDITURE TO PARENT, NON-RESIDENT COMPANY	40(a)(i)	No income accrued or arose to the payee from the payment made by the assessee to its non-resident parent company in respect of the expenditure incurred by the latter in connection with the business activity carried on by assessee was not required to deduct tax at source and therefore, the payments could not be disallowed by invoking the provisions of s. 40(a)(i); disallowance could not be made also for the reason that the income of the assessee is to be computed as per the special provisions of s. 42 which overrides the general provisions of computation of income.	Cairn Energy India Pvt. Ltd.	(2009) 30 DTR 258 (Chennai)(Trib).
BUSINESS EXPENDITURE – REPAIRS – RENTED PREMISES	37	Repair expenses incurred by the assessee on the rented premises is allowable u/s. 37(1) of the Act.	Alkem Laboratories (P) Ltd.	(2009) 28 DTR 11 (Pat).
BUSINESS EXPENDITURE - REPLACEMENT EXPENDITURE IS NEITHER “CURRENT REPAIRS” NOR “REVENUE”	37	Replacement of machinery in a textile mill neither amounts to a current repairs nor revenue expenditure as each separate machine is an independent entity which brings an enduring benefit to the assessee.	Sri Mangayarkarshi Mills (P) Ltd.	(2009) 26 DTR 58 315 ITR 114 224 CTR 513 (SC).
BUSINESS EXPENDITURE – RESIDENTIAL FACILITY TO ENGINEERS	37	Expenditure in providing residential facility to engineers at work site is wholly for the purposes of business and allowable as business expenditure in toto.	Niko Resources Ltd.	(2009) 123 TTJ 310 (Ahd).
BUSINESS EXPENDITURE - RETRENCHMENT COMPENSATION OF CLOSED UNIT	37	Expenses pertaining to closed units on account of retrenchment compensation paid to employees and interest on monies borrowed for payment of retrenchment compensation, provident fund and legal expenses are allowable expenses as the assessee continued the business in other three units.	D.C.M. Ltd.	(2010) 320 ITR 307 (2009) 179 Taxman 295 221 CTR 513 (Del).
BUSINESS EXPENDITURE – REVENUE OR CAPITAL – DEVELOPMENT OF COMPUTER	37	Whether the expenses made towards the development of computer software is a Revenue Expenditure – Held, yes. Any expenses made towards computer software are Revenue expenditures.	Varinder Agro Chemicals Ltd.	(2009) 224 CTR 326 / 22 DTR 127 (P&H)



SOFTWARE				
BUSINESS EXPENDITURE - REVISED RETURN - CLAIM MADE FIRST TIME IN THE COURSE OF ASSESSMENT	37	AO is obliged to give due relief to assessee or entertain its claims if admissible as per law even though the assessee had not filed the revised return. Editorial Note: Considering the Goetze (India) Ltd. vs. CIT (2006) 284 ITR 323 (SC). Refer Chicago Pneumatic India Ltd. vs. Dy. CIT (2007) 15 SOT 252 (Mum.)	Emerson Network Power India (P) Ltd.	(2009) 122 TTJ 67 19 DTR 441 (Mumbai) (Trib.)
BUSINESS EXPENDITURE - ROYALTY	37	Royalty paid for getting non-assignable license, right and privilege to manufacture on the licensed mark, and distribute the licensed product in India and use expression "Benetton", without becoming owner or acquiring any right in licensed trade mark, was held to be a revenue expenditure.	DCM Benetton India Ltd.	(2009) 178 Taxman 52 (Delhi)
BUSINESS EXPENDITURE - S. 43B(F) - (LEAVE ENCASHMENT) - UNCONSTITUTIONAL	43B(f)	S. 43B (f) was inserted by the Finance Act, 2001 w.e.f. 1.4.2002 to provide that any sum payable by the assessee as an employer in lieu of any leave at the credit of his employee shall be allowed as a deduction only in the year of actual payment. The said amendment was enacted to supersede the judgment of the Supreme Court in Bharat Earth Movers vs. CIT 245 ITR 428 where it was held that even a provision for leave encashment was deductible on accrual basis. In Exide Industries Ltd vs. UOI 292 ITR 470, the Calcutta High Courts struck down s. 43B(f) as being arbitrary, unconscionable and de hors the apex Court decision in the case of BEML on the ground that the objects and reasons were silent as to why the amendment was effected and that the amendment was not consistent with s. 43B which was originally inserted to plug evasion of statutory liability. The said judgment of the Calcutta High Court has now been stayed by the Supreme Court and it has been clarified that the assessee must pay tax as if s. 43B(f) is on the statute though it is entitled to make a claim in its return	Exide Industries	www.itatonline.org
BUSINESS EXPENDITURE - SALARY TO PARTNER	40(b)	Salary paid to partner can not be disallowed only on the reason that salary is not quantified in partnership deed.	Suman Construction	(2009) 34 SOT 495 (Pune)
BUSINESS EXPENDITURE - SALES TAX DEFERRED	43B	Amount of sales tax deferred under the State Government's Deferment Scheme could not be disallowed u/s. 43B of the Act.	Jyoti Jain.	(2009) 17 DTR 286 (Raj).
BUSINESS EXPENDITURE - SETTING UP AND COMMENCEMENT OF BUSINESS	37	The business of assessee cannot be said to have been setup on the date of incorporation of the company as the main objects of the assessee was to acquire the international express business of AFL Ltd., which in turn was subject to necessary approvals of the law. As the setting up and	DHL Express (I) Pvt. Ltd.	(2009) 24 DTR 602 124 TTJ 108 (Mum) (Trib).



		commencement date of business is different and the expenditure incurred after setting up of business i.e. 2 nd Nov., 2001, is allowable as revenue expenditure, though business commenced from 1 st Jan., 2002.		
BUSINESS EXPENDITURE - STUDY REPORT ON REORGANIZATION OF BUSINESS	35D(2)(a)(iii), 37	Expenditure incurred on reorganization of core business of the assessee and improving its market share and profitability cannot be treated as an expenses incurred for conducting market survey or any other survey necessary for the business of the assessee. It cannot fall within the purview of sub-s. 2(a)(iii) of s. 35D, hence, the expenses were deductible as revenue expenditure.	Majestic Auto Ltd.	(2009) 310 ITR 90 (P&H)
BUSINESS EXPENDITURE – SUB-CONTRACTOR	40(a)(ia), 194C(2)	Assessee taking vehicles on hire for purpose of executing contract not a case of sub contract. Tax need not be deducted at source. Payment allowable.	Mythri Transport Corporation	(2010) 1 ITR 290 (Visakhapatnam) (Trib).
BUSINESS EXPENDITURE - TECHNICAL SERVICE	37	Expenses incurred which was based on commercial consideration and business expediency, no interference is warranted.	Udaipur Distillery Co. Ltd.	(2009) 224 CTR 32 (SC).
BUSINESS EXPENDITURE – TRADE DISCOUNT	37 40A(2)	Trade discount provided to a sister concern is not an expenditure and therefore, no disallowance u/s. 40A(2) of the Act can be made.	United Exports	(2009) 28 DTR 315 (Del).
BUSINESS EXPENDITURE – VIOLATION OF RULES & REGULATIONS OF NATIONAL STOCK EXCHANGE	37	Violation of Rules & Regulations of National Stock Exchange by its members could not be termed as an offence or as an act prohibited by law. Amount paid as fine by a member of National Stock Exchange to NSE cannot be disallowed under Explanation to s. 37(1).	Goldcrest Capital Markets Ltd.	ITA Nos. 1240 & 1241/Mum/2006, Bench – B, A.Y. 2003–04, Dt. 21-1-2009 BCAJ p. 795, Vol. 40-B, Part 6, March 2009.
BUSINESS EXPENDITURE - ACTUAL PAYMENT	2(24)(x) r.w.s. 36(1)(va)	Employer's contribution to provident fund if not paid within the due date the employer was not entitled to deduction. Omission of second proviso to s. 43B w.e.f. 1-4-2004 is not retrospective in nature. Contribution of provident fund dues after closing of the accounting period, but before due date of filing returns are made, then it was not allowable as deduction.	Pamwi Tissues Ltd.	(2009) 313 ITR 137 (Bom).
BUSINESS EXPENDITURE- AD HOC DISALLOWANCE- COMPANY – PERSONAL USE	37	Assessee being a company, no ad hoc disallowance could be made out of vehicle running and maintenance and telephone expenses on account of personal user.	Amtek Auto Ltd.	(2009) 20 DTR 466 (Del) (Trib).
BUSINESS EXPENDITURE CAPITAL OR REVENUE - ADVANCE LEASE RENT	37.	Assessee acquiring land on lease for a period of 99 years, making payment of advance rent in the sum of Rs. 48 crores, and paying monthly rent of Rs. 40 per month, Advance Lease Rent paid was allowable revenue expenditure. Editorial - see Joint CIT v Mukund Ltd. (2007) 291 ITR (AT) 249 (Mumbai)(SB). Lump sum paid as premium for securing lease hold right held as capital expenditure.	Sun Pharmaceutical Ind. Ltd.	(2009) 227 CTR 206 24 DTR 262 (Guj.)



BUSINESS EXPENDITURE- CAPITAL OR REVENUE- STAMP DUTY AND REGISTRATION CHARGES	37	Expenditure incurred on stamp duty and registration charges at the time of execution of lease agreement for taking on lease the fruit processing plant was allowable as revenue expenditure.	Gopal Associates	(2009) 222 CTR 307 (HP).
BUSINESS EXPENDITURE- DISPUTED LIABILITY - CONTRACTUAL	37	Assessee was not entitled to deduction of provision for excess bill raised by the supplier which has not been accepted by the assessee, liability being contractual, it will arise only on settlement of dispute.	Sicgil India (P) Ltd.	(2009) 123 TTJ 462 (Chen) (TM).
BUSINESS EXPENDITURE- DONATION TO LIBRARY	37	Assessee, an advocate made donation to a charitable trust with the specific direction that the interest of the amount would be utilised for purchase of books and magazines and to provide other facilities to advocates practicing in Court. The Tribunal held that as there was nothing on record to establish that donation was directly connected and related to business or profession of the assessee the same is not allowable as business expenditure.	A.M. Mathur	(2009) 117 ITD 274 (Indore).
BUSINESS EXPENDITURE- EXEMPTED INCOME- SHARE INCOME FROM PARTNERSHIP FIRM	10(2A), 14A, 36(I)(iii)	Share income of assessee company from a firm in which it was partner did not constitute income of the assessee u/s. 10(2A), therefore s. 14A is applicable hence proportionate interest on borrowed funds diverted as interest free loans is disallowable.	Popular Vehicles & Services Ltd.	(2010) 33 DTR 140 (Ker)
BUSINESS EXPENDITURE- INCENTIVE COMMISSION- SISTER CONCERNS	40A(2)	Incentive commission paid to sister concern was allowed in earlier years. Sister concern paying tax at higher rate. Provision of s. 40A(2) cannot be applied as the case is not evasion of tax.	Indo Saudi Services (Travel) P. Ltd.	(2009) 310 ITR 306 (Bom).
BUSINESS EXPENDITURE- INTEREST ON BORROWED CAPITAL	36(i)(iii)	Interest paid on borrowed capital cannot be disallowed on the ground that the amount was advanced as interest free advance to its 100 percent subsidiary company.	Dalmia Cement Bharat Ltd.	(2009) 183 Taxman 422 (Delhi).
BUSINESS EXPENDITURE - INTEREST ON BORROWED CAPITAL	36(1)(iii)	Interest on amount borrowed for expansion of business though capitalized in the books of account is allowable as deduction.	Ashima Syntex Ltd.	(2009) 120 TTJ 721 18 DTR 91 (Ahd) (SB)(Trib).
BUSINESS EXPENDITURE- PAYMENT OF DEMURRAGE	37 40(a)(i)	Tax having not been deducted at source from payment of demurrage charges to foreign shipping company, s. 40(a)(i) was clearly attracted; assessee being a resident company, there was no question of invoking s.172.	Orient (Goa) (P) Ltd.	(2009) 30 DTR 129 (Bom).
BUSINESS EXPENDITURE – WARRANTY EXPENSES –	37	The Supreme Court held that warranty is an integral part of the sale price and if the warranty expenses are properly ascertainable and discounted on accrual basis deduction is allowable u/s. 37 of the Act.	Rotork Controls India P. Ltd.	(2009) 314 ITR 62 (SC).



BUSINESS EXPENDITURE- YEAR IN DEDUCTIBLE	37	Since the assessee has completed more than 95 percent of project and offered income there from on year-to-year basis, expenses incurred on home for aged and on club house were allowable as business expenditures.	Sheth Developers (P) Ltd.	(2009) 33 SOT 277 (Mum).
BUSINESS EXPENDITURE- YEAR OF ALLOWABILITY - LIABILITY FOR DAMAGES	37	Liability to pay damages was incurred by the assessee on 28 th May 1987, when the Trade Association made an award for damages for breach of contract, therefore, deduction is allowable in AY 1988-89 notwithstanding the fact that the award was challenged in appeal by the assessee.	Navjivan Roller Flour & Pulse Mills Ltd.	(2009) 224 CTR 55 (Guj).
BUSINESS INCOME - BUSINESS LOSS - SPECULATION LOSS -	28(i), 43(5)	Payment made by assessee to bank for cancellation of forward foreign exchange contract being in the nature of damages for non performance of contract is allowable as business loss and it can be treated as a speculative loss as there is no settlement of contract and s. 43(5) is not attracted.	Voltas International Ltd	(2009) 126 TTJ 702 (Mum).
BUSINESS INCOME - CAPITAL GAINS – INVESTMENT IN SHARES	28(1), 45	Assessee dealing in shares both as business as well as investment and inter alias, keeping separate accounts in respect of the two portfolios, profits from sale of shares in investment portfolio after holding them for two to four years were taxable as capital gains and not as business income.	Saranath Infrastructure (P) Ltd.	(2009) 120 TTJ 216 (Lucknow).
BUSINESS INCOME – CAPITAL GAINS- PERQUISITE- PARTNER – FIRM	28(iv), 45(4)	Increase in capital of partners pursuant to revaluation of assets of firm, no benefit or perquisite arose to partners on account in course be applied to bring sum in question to tax in hands of partners of firm. As the firm got converted in to a company, capital gain on such transfer could be brought to tax only in hands of firm and not, in hands of partners u/s. 45(4).	Manish Chedda	(2009) 29 SOT 138 (Mum).
BUSINESS INCOME – FAMILY SETTLEMENT	28(iv)	In terms of family settlement certain shares held by the assessee were to be transferred to Walchand & Co. Pvt. Ltd. However due to certain reasons, the same could not be transferred, by the physical possession of share certificates were handed over to the solicitors. The dividend received during intervening period was shown as liability. The AO treated the same as benefit or perquisite chargeable to tax u/s 28(iv). Held that s. 28(iv) could be applied only in case where benefit or perquisite was received in kind or when the assessee had credited such amount in P&L A/c. S. 28(iv) could be applied only in case where an actual income was received by the assessee in garb of some benefits which were not shown as chargeable to tax.	Pal Enterprises Pvt. Ltd.	ITA No. 1994/Mum/2005, Bench – ‘H’, A.Y. 01-02, dt. 20-10-2008 BCAJ p. 518, Vol. 40-B, Part 4, January 2009.
BUSINESS INCOME – INCOME FROM HOUSE PROPERTY	22, 28(i)	Assessee running business centre by exploiting property and not merely letting out the property, receipt from such activity be considered as business income and not income from house property.	Harvindarpal Mehata HUF	(2009) T.L.R. 285. (Mumbai Bench “G”).
BUSINESS INCOME -	22, 28(i)	Assessee not merely letting out its premises for	Rasiklal & Co. (P) Ltd.	(2009) 309 ITR 117



INCOME FROM HOUSE PROPERTY - INCOME FROM WARE HOUSING		warehousing but being also under obligation to provide adequate security to the material stored apart from receiving and delivering stock, taking physical inventory at regular intervals, to do loading and unloading and stock taking in addition to ensuring proper spray of pesticides in the godown, it was doing a complex commercial activity, hence, receipts were taxable as business income and not income house property, more so when receipts were assessed as business income in the past and there was no change in factual or legal position.		118 ITD 293 (AT) (Mumbai).
BUSINESS INCOME – INCOME FROM OTHER SOURCES	28(1), 56	Builder/assessee collecting advance from prospective purchasers of flats and keeping the funds temporarily in fixed deposit. Interest on such deposit is chargeable as ‘Business Income’ and not as ‘Other Sources’.	Lok Holdings	(2009) 212 Taxation 159. 308 ITR 356 (Bom).
BUSINESS INCOME – INCOME FROM OTHER SOURCES	28(i), 56	Where the prominent object of the assessee company was, ‘to deal in properties’ and the rental income derived by the assessee from such business was assessed as business income in earlier years, the same cannot be treated as income from other sources in absence of any new facts / evidence brought on by the revenue authorities.	D.S. Promoters & Developers (P) Ltd.	(2009) 25 DTR 8 (Del.)
BUSINESS INCOME – INTEREST – PARTNERSHIP	28(v)	When there is no clause in partnership for payment of interest to partners regardless of profits. Right to receive interest from firms not accrued. Notional additions on account of accrued interest from partnership not sustainable.	Minnnow Trading Company P. Ltd.	(2008) 307 ITR 11 (AT)(Mum).
BUSINESS INCOME – RIGHT TO SUE- REMISSION OR CESSATION OF TRADING LIABILITY	28(va), 41(1), 68	Compensation received for forgoing right to sue for specific performance of contract not a trading liability, the said amount being on account of capital account is a capital receipt.	Govindbhai C. Patel	(2010) 1 ITR 23 (Ahmedabad) (Trib)
BUSINESS INCOME - SPECULATION LOSS – SHARES IN STOCK IN TRADE	28(1), 73	Even shares-in-stock on valuation at the close of accounting year resulting in profit or loss, such profit & loss u/s. 28(1) is speculation profit or loss by virtue of proviso to s. 73.	Prasad Agents (P) Ltd.	(2009) 213 Taxation 571 (Bom).
BUSINESS INCOME – VIS-À-VIS CAPITAL GAINS – INVESTMENT IN SHARES	28(1), 45	Assessee’s business being investment in shares and interest on capital borrowed for purposes of said investment having been claimed and allowed as deduction u/s. 36(1)(iii) assessee cannot at the same time, be allowed to return said profits as capital gains by taking benefit of indexation and the said profits have to be assessed as business income.	Peninsular Investments Ltd.	(2009) 120 TTJ 96 (Hyd.)
BUSINESS INCOME VIS-À-VIS CAPITAL GAIN	28, 45	Property held for several years in Capital Account and shown in Balance Sheet as a Capital Asset – Profit on sale of impugned property is to be assessed as Capital Gains and not as Business Income.	DCM Ltd.	(2009) 221 CTR 513 (Del).
BUSINESS LOSS – CAPITAL LOSS - LOAN TO	2(47), 28, 37(1), 45	Loan given by assessee to its subsidiary for acquisition of shares in the joint venture company not being in line with the business activities of the	DCM Ltd.	(2009) 23 DTR 163 123 TTJ 114



SUBSIDIARY		assessee, the irrecoverable amount can not be allowed as a business loss u/s. 28 or 37, nor as capital loss u/s. 45 as it is purely a case of disappearance of loan it self and no transfer is involved.		23 DTR 163 (Del)(Trib).
BUSINESS LOSS – DEDUCTION	28(1)	Where assessee executed a security transactions, in violation of provisions of s. 15 of Security Contracts (Regulation) Act, 1956 and loss generated out of said transaction were undisputedly, borne out of books of assessee, such a loss would be allowable loss.	Bank of America	(2009) 27 SOT 97 124 TTJ 846 (Mum).
BUSINESS LOSS – SALE OF SHARES	260A	The loss incurred by the assessee on the sale of shares held by the assessee should be treated as business loss of the assessee.	Malabar Industrial Co. Ltd.	(2010) 320 ITR 486 (Karn.)
BUSINESS LOSS - SHARE BROKER – IRRECOVERABLE AMOUNTS FROM CLIENTS	28(i)	Assessee a share broker writing off amounts due from clients in the course of business as irrecoverable, same is allowable as business loss u/s. 28(i).	Kotak Securities Ltd.	(2009) 24 DTR 214 123 TTJ 241 (Mum) (Trib).
BUSINESS LOSS – YEAR IN WHICH DEDUCTIBLE	28	Assessee's goods which were stored in godowns owned by State Warehousing Corporation, were destroyed by fire in 1978. The assessee filed suit for recovery of loss against the insurance company and the State Warehousing Corporation but did not claim loss in its tax return. The suit was dismissed on 31-5-1982. Thereafter the assessee claimed the set-off of loss for year relevant to AY 1983-84. The ITO as well as the CIT(A) and the Hon'ble ITAT held that the loss pertained to earlier years and hence could not be claimed in year relevant to AY 1983-84. Reversing this decision the Hon'ble High Court held that since the assessee had recognized the loss after the suit was dismissed, it was entitled to claim the loss in year relevant to A.Y. 1983-84.	New Diwan Oil Mills	(2009) 178 Taxman 461 (P&H).
BUSINESS NOT SET UP DURING THE YEAR – RECEIPTS CANNOT BE ASSESSED AS INCOME FROM OTHER SOURCES	28	Receipts up to the stage of setting up of business would go to reduce the cost of setting up of business. It would be travesty of justice if the assessee's expenditure up to the stage of setting up is treated as capital in nature but not the receipts during the same period.	Shapoorji Pallonji Tower Co. Ltd.	(2009) 28 DTR 12 (Mum.)
BUSINESS OF EXPLORATION – MINERAL	44BB	Reimbursement of expenditure relating to supply of raw material is taxable, and cannot be excluded from receipts while determining profit and gains u/s. 44BB, as same is on account of provision of services and facilities. Whereas reimbursement of expenditure relating to custom duty is not taxable u/s. 44BB.	Transocean Offshore Deep Water Drilling Inc.	176 Taxman 123 (Delhi).
CAPITAL GAINS - DEVELOPMENT RIGHTS –AMOUNT RECEIVED BY MEMBER OF	2(47), 45	Assessee received certain sum on account of grant of development rights to developer. Assessee has not transferred any rights in or with respect to flat to developer hence there was no transfer of capital asset and s. 45 was not attracted.	Deepak S. Shah	(2009) 29 SOT 26 (Mum).



SOCIETY.		Editorial Note: see Jethalal D. Mehta v Dy CIT (2005) 2 SOT 422 (Mum), ITO v Lotia Co operative Housing Society Ltd (2008) 12 DTR (Mumbai) (Trib) New Shailaja CHS v ITO . ITA no 512/M/2007 Bench B DT 2 ND Dec 2008 (Mumbai)		
CAPITAL GAINS – EXEMPTION – EXTENSION OF EXISTING BUILDING	54F	Mere extension of existing building would not give benefit to assessee u/s. 54F.	T.N. Gopla	(2009) 121 ITD 352 (Chennai)(TM).
CAPITAL OR REVENUE- COMPENSATION FOR TERMINATION OF AGREEMENT	4.	Compensation received by assessee from the other party for termination of the agreement for transfer of property to be treated as capital receipt and not as revenue receipt.	S. Zoraster & Co.	(2009) 31 DTR 107 (Raj).
CAPITAL GAIN – BUSINESS INCOME	45	Where the assessee sold its agricultural land which was used by it for carrying out agricultural activities after holding the same for more than two decades, gain arising out of sale of such land was held to be assessable as ‘Capital gain’ and not ‘Profits and gain of business or profession’.	S.K. Kaintal	(2009) 23 DTR 68 (P&H)
CAPITAL GAIN – EXEMPTION	54EC	There is no requirement in s. 54EC that investment should be in the name of assessee and only condition is that sale proceeds of assets must be invested in certain specified bonds.	Saraswati Ramanthan	(2009) 116 ITD 234 (Delhi)(SMC).
CAPITAL GAIN - FAMILY ARRANGEMENT – TRANSFER	45	Surrender of shares of a company by the assessee, as a daughter of her paternal family in terms of an arbitration award to settle the disputes between two family groups was transfer in the course of family arrangement and did not result in any capital gain. Editorial Note:- See the judgment of Apex Court in Manish Mohan Sharma v/s. Thakkar (2000) 131 Company Cases 149 (SC) / (2006) 4 STC 416.	P. Sheela	(2009) 17 DTR 415 308 ITR 350 (AT)(Bang).
CAPITAL GAIN – FSI TRANSFER	45, 48, 55(2)	The Assessee, a co-operative housing society, owned a land and building. Upon the enactment of Development Control Regulations, 1991 (DCR), it became entitled to additional FSI of around 11,000 sq. ft. which was transferred for the consideration of Rs. 48,96,225/-. Held that right transferred was not covered by any of the items mentioned u/s 55(2) of the Act. Since the right transferred emanated from amendment to DCR and is not covered by any of the items of s. 55(2) and does not have any cost of acquisition no capital gain can be charged on transfer of additional FSI.	New Shailaja CHS Ltd.	ITA No. 512/Del/2007, Bench – B, A.Y. 2003 – 04, dt. 2-12-2008 BCAJ pg. 669, Vol. 40-B, Part 5, February 2009
CAPITAL GAIN – IMMOVABLE PROPERTY	45	Capital gain on sale of immovable property was chargeable to tax in the year in which actual physical possession of the property is given to the purchaser even though the agreement is entered into in earlier year.	Geetadevi Pasari	(2009) 17 DTR 280 (Bom).



CAPITAL GAIN - INVESTMENT IN RESIDENTIAL HOUSE - BORROWED FUNDS S. 54 RELIEF ALLOWABLE EVEN IF NEW HOUSE PURCHASED FROM BORROWED FUNDS	54	S. 54 provides that if an assessee has LTCG on transfer of a residential house and he purchases or constructs a residential house within the specified period then the amount appropriated towards the new house shall be deducted from the LTCG. The assessee sold a house and used the sale proceeds to buy commercial property. Subsequently (but within the specified period) he borrowed funds and purchased a new house. The AO denied deduction u/s 54 on the ground that the new house had been purchased out of borrowed funds and not out of the consideration received for the old house. On appeal, the Tribunal and High Court upheld the claim on the ground that s. 54 merely required the purchase of the new house to be within the specified period. The source of funds for the purchase was irrelevant.	P.S. Pasricha (DR)	www.itatonline.org
CAPITAL GAIN - INVESTMENT IN RESIDENTIAL HOUSE - BORROWED FUNDS	54F	In case assessee constructs or purchases a residential house out of borrowed funds, he is not eligible for deduction u/s. 54F.	Milan Sharad Ruparel	(2009) 27 SOT 61 (Mum.)
CAPITAL GAIN - RIGHT TO SUBSCRIBE FOR SHARES ARISES ONLY WHEN OFFER IS MADE BY THE COMPANY	48	Right to subscribe for additional shares/debentures is a distinct, independent and separate right, capable of being transferred independently of the existing shareholding, on the strength of which such Rights are offered.	Navin Jindal	www.itatonline.org (2010) 228 CTR 478 320 ITR 708 (SC).
CAPITAL GAIN – SALE OF LAND – ELIGIBLE	48	Any capital gain on sale of land where the land purchased out of borrowed funds, the registration charges and interest paid on borrowings is eligible for deduction and indexation.	Ishtiaque Ahmed	ITAT ‘C’ Bench, New Delhi. ITA No. 863/D/2009. Source : BCAJ
CAPITAL GAIN – TRANSFER – CHARGEABLE IN THE YEAR OF TRANSFER	45(1)	As per the provisions of s. 45(1) of the Act, for charging capital gains tax, the previous year in which the transfer takes place is most crucial. As in the present case the transfer had taken place in the A.Y. 1995-96 and not in the A.Y. 1998-99, the capital gains would be chargeable in the A.Y. 1995-96.	Vemanna Reddy (HUF)	(2009) 30 SOT 11 (Bang.)
CAPITAL GAIN – TRANSFER – NOT LIABLE TO CAPITAL GAIN	2(47), 45	The amount received for not competing with the purchaser company in future in the suburbs could not be made taxable under the heading “capital gains”.	Amol Narendra Dalal	(2009) 318 ITR 429 (Bom).
CAPITAL GAIN - TRANSFER – STAMP VALUATION	50C	Substitution of sales consideration on transfer of land and building with the value adopted by the stamp valuation authority. Assessee objecting to the substitution of sales price. AO has no discretion and should refer the matter to valuation officer to determine fair value.	Abbas T. Reshamwala	ITA No. 3093/Mum/2009 January (2010) BCAJ Vol. 41-B
CAPITAL GAIN – TRANSFER OF	2(47), 45(3),	When all the old partners retired from the firm on introduction of two new partners and new partners	Gurunath Talkies	(2009) 226 CTR 474



CAPITAL ASSETS	45(4) & 47(ii)	continued the business of firm, there was transfer of capital assets within the meaning of s. 2(47) attracting s. 45(4).		(Kar.)
CAPITAL GAINS – ACCRUAL - ENHANCED COMPENSATION	45(5), 155(16)	Enhanced compensation for acquisition of land is taxable in the year of receipt and can not be taxed in different years in which it accrued.	Roop Singh	(2010) 127 TTJ 377 33 DTR 257 (Del) (Trib)
CAPITAL GAINS – ACCRUAL - TRANSFER OF LEASE HOLD RIGHTS	2(47) & 45	Assessee has parted with constructive possession of leasehold rights to the transferee, its sister concern against the receipt of the part consideration subsequent reversal of entries and sub-division of land and sale of plots in the name of the assessee would not make any difference as assessee and its sister concern were situated in the same premises, hence there was transfer within the meaning of s. 2(47)(v) and capital gain were chargeable in the hand of assessee in the year itself.	Atlas Automotive Components (P) Ltd.	(2009) 25 DTR 377 123 TTJ 778 (Mum) (Trib).
CAPITAL GAINS – AGRICULTURAL LAND	2(14)(iii)	Distance of the agricultural land belonging to the assessee within the meaning of s. 2(14)(iii)(b) has to be measured in terms of the approach by road and not by a straight line distance on horizontal plane or as per crow's flight.	Satinder Pal Singh	(2010) 33 DTR 281 (P&H)
CAPITAL GAINS – AGRICULTURAL LAND	2(14)(iii), 54B	Reports of the Tehsildar having certified that the assessee's land was 8 kms away from the municipal limits, the land constituted agricultural land, entitled to exemption u/s. 54B.	Satish Kumar Mittal & Mehinder Singh & Ors.	(2009) 32 DTR 345 (P&H).
CAPITAL GAINS – BONUS SHARES – COMPUTATION	55(2)(AA)	Rules of computation of cost laid down in various sub-clauses of cl.(aa) of s. 55(2) have been made subject to the provisions of sub cls (1) and (ii) of cls (b) and, therefore, the fair market value prevailing as on 1 st April 1981, ought to be taken as the cost of acquisition in the case of bonus shares held by the applicant on that date.	Four Star Oil & Gas Co.	(2009) 21 DTR 50 (AAR).
CAPITAL GAINS – BUSINESS INCOME	28(1), 45	Assessee dealing in real estate, tenancy right in respect of a building occupied by it for a long time constituted capital asset in its hands, notwithstanding that it was shown as stock in trade in its books of accounts and receipts from surrender thereof in favour of the owner gave rise to capital gains/loss.	Hitashi Estates Ltd.	(2009) 18 DTR 206 313 ITR 393 (Del).
CAPITAL GAINS - BUSINESS INCOME – INCOME FROM UNDISCLOSED SOURCES	28(iv), 45, 48, 69	In case of transfer of shares to a group company at cost price, difference between market value of the shares and their cost price cannot be brought to tax as capital gains, there being no material to show that assessee had received more consideration than recorded in the books. Purchase of shares at a particular price which was below the market price as an investment was not income u/s. 28(iv) as it was neither benefit nor perquisite that had arisen to the assessee from the business or in the exercise of a profession.	Rupe Finance & Management (P) Ltd.	ITA No. 1208 of 2008 dt. 20/10/2008 (Bom). (Unreported) www.itatonline.org



		<p>Assessee company purchasing shares at a price much lower than market price and the investment having been recorded in the books no addition could be made u/s. 69, there being no allegation that the apparent consideration was not the real consideration.</p> <p>See Rupee Finance & Management (P.) Ltd. vs. ACIT (2008) 15 DTR 466 (Mum.) (Trib.) / (2008) 119 TTJ 643 (Mum.)</p>		
CAPITAL GAINS - BUSINESS INCOME – S. 28, 45	28, 45	<p>Where property in question was held by assessee for several years in capital account and was shown in balance sheet of assessee as “capital asset” profit earned by assessee on sale of property was to be assessed under head “capital gains” and not under head ‘income from other sources’.</p>	D.C.M. Ltd.	(2009) 179 Taxman 295 221 CTR 513 (Del).
CAPITAL GAINS - BUSINESS INCOME – SOLITARY TRANSACTION	28(i), 45	<p>Solitary transaction of purchase and sale of land made by the assessee company after retaining it for about ten years without undertaking any steps towards development of property or treating it as stock in trade cannot be regarded as business activity and, therefore, the gain arising on the sale of land is assessable as capital gains.</p>	Baguio Investment (P) Ltd.	(2010) 33 DTR 457 (Pune) (Trib).
CAPITAL GAINS – BUSINESS INCOME - TRANSACTION IN SHARES	28(I), 45	<p>Assessee’s claim of short term and long term capital gains from transactions in shares having been allowed on identical facts in earlier years could not be disallowed merely because in the year under consideration, the Finance Act 2004, had conferred certain benefits on the assessee on such transaction. Modus operandi of assessee remaining the same, assessee’s claim deserved acceptance by following rule of consistency.</p> <p>Editorial Note: Affirmed by Bombay High court(2010) 34 DTR 52 (Bom). (2010) 228 CTR 582 (Bom). Also Refer Saranath Infrastructure (P) Ltd. vs. ACIT (2009) 120 TTJ 216 (Luck.)</p>	Gopal Purohit	(2009) 122 TTJ 87 20 DTR 99 (Mum)
CAPITAL GAINS – CAPITAL GAIN OR BUSINESS INCOME	50C	<p>S. 50C cannot be applied for determining the income under other heads, it is applicable only for the purpose of determining the sale consideration for computation of capital gains, only.</p>	Inderlok Hotels (P) Ltd.	(2009) 122 TTJ 145 (Mum).
CAPITAL GAINS – CHARGEABILITY - MONEY RECEIVED FROM INSURANCE COMPANY	43(6), 45(IA), 50	<p>Expenditure incurred by the assessee on repairs of building damaged tanks and terminals being more than the insurance receipts resulting in to no profits or gains, the provisions of s. 43(6)(c)(I) or 45(IA) or 50 were not applicable.</p>	J.R. Enterprises	(2009) 24 DTR 311 (Mum)(Trib).
CAPITAL GAINS – CHARGEABILITY – SALE OF COPYRIGHT, PATENT	45, 48, 55(2)(a)	<p>Matter regarding taxability of amount received for transfer of patent, copyright, etc. is remanded for reconsideration as the tribunal had not examined the facts and circumstances of the case vis-à-vis decision in CIT vs. B. C. Srinivasa Setty (1981) 128 ITR 294 (SC) case, bearing in mind that the assessee himself had offered to tax, as an amount</p>	P.R. Seshadri	(2010) 228 CTR 334 (Kar.)



		capable of being ascertained for capital gain and on his own shown an initial cost of acquisition of asset as nil.		
CAPITAL GAINS – COMPENSATION RECEIVED – NOT LIABLE TO TAX – LAW BEFORE APRIL 1, 2000	41(2), 45, 48, 50, 55(2)(1)	The banking undertaking, inter alias, included intangible assets like goodwill, tenancy rights, man power and value of banking license. It was not possible to earmark the compensation received by the assessee item wise, therefore, it was not possible to compute the capital gains and the sum of Rs.10.20 crores was not taxable u/s. 45 of the Act, This was a case where the computation provisions could not apply.	PNB Finance Ltd.	(2008) 307 ITR 75 (SC).
CAPITAL GAINS – COMPUTATION	112(1)	Benefit of proviso to s. 112(1) cannot be denied to non-residents and therefore, long term capital gains arising to the applicant, a non-resident company, on the sale of equity shares of an Indian Company, being listed securities is taxable @ 10 per cent as per proviso to s. 112(i).	Burmah Castrol Plc.	(2008) 16 DTR 145 (AAR).
CAPITAL GAINS – COMPUTATION	45, 50C	Where immovable property is transferred by a partner to the firm as a capital contribution and registration does not take place by paying stamp duty, the case would be covered u/s. 45(3) and provisions of s. 50C cannot be invoked. S. 50C override s. 45(3) only if the sale deed is sought to be registered by paying stamp duty.	Carlton Hotel (P) Ltd.	(2009) 122 TTJ 515 (Luck).
CAPITAL GAINS – COMPUTATION	48	Liability to tax on capital gains would arise in respect of only those capital assets in acquisition of which an element of cost is either actually present or capable of being reckoned and not in respect of those assets in acquisition of which element of cost is altogether inconceivable. Burden is on revenue to prove that assessee had incurred cost for acquiring land. On the facts it was submitted that neither Peswas nor Scindias had incurred any cost for acquiring said land and, therefore, it fell outside, purview of charge of capital gains.	HUF of H. H. Late Sir J. M. Scindia	(2009) 118 ITD 190 (Mum).
CAPITAL GAINS – COMPUTATION - REVALUATION OF ASSETS AFTER CONVERSION OF PROPRIETARY CONCERN IN TO PARTNERSHIP	45(3), 4(1)(a), Gift tax Act.	Assessee having converted his proprietary concern in to a partnership, firm revalued the assets and credited the capital accounts of the partners by the revalued figure at the end of the same previous year, s. 45(3), is applicable and the said value has to be taken to be the full value of consideration and not the amount credited to the capital account of assessee. When capital gain is charged there is no deemed gift u/s. 4(1)(a), of Gift tax Act.	Dharmshibhai B. Shah	(2009) 32 DTR 106 126 TTJ 721 (Ahd) (TM).
CAPITAL GAINS – COMPUTATION– INTEREST CAPITALISED	48.	Interest was paid because instalments could not be paid in time and same had become part of cost of acquisition, hence the interest capitalised has to be considered as part of cost of acquisition.	Ajmal Fragrances & Fashions (P) Ltd.	(2009) 34 SOT 57 (Mum).
CAPITAL GAINS - CONVERSION OF STOCK IN TRADE INTO CAPITAL	45(2)	Land was kept as stock in trade up to March 31 st 2002, and was converted into investment on April 1 st , 2002 and sold on December 12, 2002. Since it was held as capital asset for not more than 36	Splendor Constructions (P) Ltd.	(2009) 27 SOT 39 (Delhi).



ASSET		<p>months, the capital gain arising on its transfer was taxable as short term capital gains.</p> <p>Editorial note - In Asst. CIT v Bright Star Investments (P) Ltd. (2008) 24 SOT 288 (Mum), the Tribunal held that the date of acquisition will be not from the date of conversion but from the date of actual acquisition as there is no similar provision like s. 45(2). Also refer Kalyani Exports & Investments (P) Ltd. & Ors. Vs. DCIT (2001) 78 ITD 95 (Pune)(TM).</p>		
CAPITAL GAINS - COST OF ACQUISITION	48, 55(2)	<p>Interest paid by assessee to the transferor shareholders of the company in addition to the acquisition price as per the directive of the SEBI for the delay in making the open offer has to be treated as part of acquisition of the shares for the purpose of computing capital gains on the sale of said shares.</p>	Burmah Castrol Plc.	(2008) 16 DTR 145 (AAR)
CAPITAL GAINS - COST OF ACQUISITION	48, 55(2)	<p>Assessee an investment company purchasing shares of company SVCL in order to take over RCL a cement manufacturing unit, payment of non-compete fee to promoters of SVCL under agreement between promoters, assessee's flagship company ICL and RCL, not to compete in the line of business with the purpose of improving business of RCL can not be treated as cost of improvement or cost of acquisition of shares of those shares.</p>	ICL Securities Ltd.	(2009) 122 TTJ 1 (Chennai)(TM)
CAPITAL GAINS – COST OF ACQUISITION – INTEREST ON BORROWED MONEY	14A, 48	<p>Interest on funds borrowed for acquisition of shares is to be taken into account towards the cost of acquisition for the purpose of computation of capital gains as prescribed u/s. 48(11).</p> <p>Capital gain on sale of shares being part of the total income of the assessee and not an exempted income, s. 14A has no application.</p>	S. Balan Alias Shanumugam Balkrishnan Chettiar	(2009) 120 TTJ 397 (Pune)
CAPITAL GAINS - COST WITH REFERENCE TO CERTAIN MODES OF ACQUISITION - PARTITION OF HUF	48, 49, 171	<p>HUF owned an immoveable property which came to be divided amongst members of HUF, in the process of partition, karta and HUF his wife (assessee) took one half share each of immovable property as property admitted of such physical partition. On partition karta and his wife had undertaken to pay certain amount to one of his sons for acquisition of his one fourth share in immovable property Both the assessee claimed the amount as deduction in their respective returns while computing the capital gains. The said claim was disallowed on the ground that the property being HUF the only cost of acquisition in hands of original owner which could be allowed u/s. 49 whereas amount paid by each of assesses to other two members of HUF would not be covered u/s. 49. The Court held that the amount paid to other two members of HUF would be termed to be cost of acquisition of additional interest or additional shares acquired by them at the time of partition allowable deduction u/s. 48 of the Act.</p>	Laliben Hariprasad	(2009) 180 Taxman 213 (Guj)



CAPITAL GAINS – DEPRECIABLE ASSETS - INVESTMENT IN BONDS	50, 54EC	<p>S. 54EC, is an independent provision not controlled by s. 50, even in respect of consideration received for depreciable assets investment can be made in eligible bonds and assessee is eligible for exemption u/s. 54EC.</p> <p>When the assessee has neither claimed any depreciation nor the AO has allowed the depreciation, in respect of building in question the provision of s. 50 can not be applied.</p>	Sudha S. Trivedi (dr. Mrs).	(2009) 31 SOT 38 (Mum).
CAPITAL GAINS – ENHANCED COMPENSATION	45(5)	<p>The Supreme Court held that even in cases where pending appeal, the Court / Tribunal / authority permits the claimant to withdraw the disputed enhanced compensation against security or otherwise, the same is liable to be taxed u/s. 45(5). The Supreme Court further held that interest u/s. 28, additional amount u/s. 23(1A) and solatium u/s. 23(2) of the Land Acquisition Act, 1894 forms part of the enhanced compensation u/s. 45(5)(b)</p>	Ghanshyam	(2009) 26 DTR 129 315 ITR 1 224 CTR 572 (SC)
CAPITAL GAINS – ESOP	45, 48	<p>Assessee having made no payment for exercising the right to purchase shares under ESOP, there was no cost of acquisition of such shares to the assessee and therefore, amount received on sale of said shares is not taxable as capital gains, further date of exercise of option and date of sale being the same, there is no difference between the deemed cost of acquisition and actual price realized by the assessee and therefore, no amount is chargeable to tax as capital gains.</p>	Bomi S. Billimoria	(2009) 124 TTJ 960 (Mumbai).
CAPITAL GAINS – EXEMPTION	54F	<p>When a house is located in a commercial complex, it can not be accepted that it is residential house or that it was used for residential purposes, in the absence of any evidence or record for use of residential purposes.</p>	Sunita Oberoi	(2009) 126 TTJ 745 (Agra)(TM).
CAPITAL GAINS - EXEMPTION – RE-INVESTMENT	54F	<p>The benefit of s. 54F is available for construction of a house. Where a person purchases an old building, demolishes it and construct a new building, the entire exercise could be understood as one of construction, so that relief need not be limited to the cost of the old building but the entire cost of construction.</p>	M. Vijaya Kumar	(2008) 307 ITR 4 (AT) (Bang.)
CAPITAL GAINS – FAMILY SETTLEMENT - COST OF ACQUISITION	45, 49(1)	<p>Family settlement is analogous to partition attracting s. 49(1) hence, in case of property acquired by way of family settlement dt. 1st September, 1997 effective from 31st July 1992, for purposes of computing capital gains, diction has to be allowed on indexed cost of acquisition by taking in to account its fair market value as on 1st April, 1981, the property having been acquired by previous owner in 1966.</p>	Baldev Raj Charla & Ors.	(2009) 121 TTJ 366 18 DTR 413 (Del)(Trib).
CAPITAL GAINS – INDEXATION – RATE OF TAX	48, 112	<p>As per s. 48, option is with the assessee to or not to avail of benefit of indexation for computation of capital gains on transfer of long term capital asset.</p>	Mohanlal N. Shah (HUF)	(2008) 26 SOT 380 (Mum).



		<p>If an assessee computes long term capital gains from sale of shares by availing of benefit of indexation. It has to offer same to tax at flat rate of 20 percent.</p> <p>If an assessee does not avail of benefit of indexation then it has to offer capital gain to tax at rate of 10 percent.</p>		
CAPITAL GAINS - INVESTMENT IN CONSTRUCTION OF HOUSE	54F	Assessee having invested long term capital gains with a company for purchase of a residential house under construction after canceling the earlier deal for purchase of a row house, the same was for construction of a house and not for purchase, hence, allocable limit for investment was three years and not two years.	Mukesh G. Desai (HUF)	(2009) 18 DTR 71 (Mum)(Trib).
CAPITAL GAINS - INVESTMENT IN MORE THAN ONE RESIDENTIAL HOUSE	54	<p>Expression "a residential house" should not be understood to indicate a singular number; assessee having purchased two residential flats, exemption u/s. 54 was available, more so as these flats are situated side by side and the builder has effected modification of the flats to make it as one unit.</p> <p>Editorial Note: See Special Bench in ITO vs. M. S. Sushila M. Jhaveri (2007) 107 ITD 327 (Mum.) (SB)</p>	D. Ananda Basappa	(2009) 223 CTR 186 180 Taxman 74 20 DTR 266 309 ITR 329(Kar).
CAPITAL GAINS - LONG TERM-SHORT TERM - FIRM - PARTNERS	48, 54, 54F, 55(2)	Where the property purchased by firm and transferred to partners at latter date, for computing the period of holding to be computed from the date of allotment to partner and not from the date of acquisition by the firm.	Shantilal J. Jain	(2009) 126 TTJ 831 (Mumbai).
CAPITAL GAINS - NON RESIDENT - RATE OF TAX CAPITAL GAINS - NON RESIDENT - RATE OF TAX	112	The assessee being a non-resident is entitled to a concessional rate of tax @ 10 percent both on account of the originally held shares and bonus share. The benefit of proviso to s. 112 to be allowed to the assessee non-resident and the capital gain tax is to be charged at the concessional rate of 10 percent.	Chicago Pneumatic Tool Company	(2009) 25 DTR 24 (Mum) (Trib).
CAPITAL GAINS - REFERENCE TO VALUATION OFFICER	55A.	While computing long term capital gains, assessee adopted value based on the approved valuer which was higher than the fair market value as on 01-04-81 determined by the AO on the basis of Departmental Valuer. The Honourable Mumbai Tribunal in Daulat Mota HUF vs. ITO, ITA No.322/M/2007, A.Y. 2003-04, Bench - D, dt. 23-07-2007 has held that AO assumes power under clause (a) of s. 55A only when in his opinion fair market value disclosed by assessee is less. Accordingly reference held to be invalid. The Mumbai Tribunal followed Ms. Rubab M. Kazerani v JCIT (2004) 91 ITD 429 (Mum)(TM), Smt. Krishnabai Tingre v ITO (2006) 101 ITD 317 (Pune) Appeal against the Mumbai Tribunal was dismissed by the Bombay High Court.	Daulat Mota HUF	ITA No. 1031 of 2008 dt. 22 September 2008 (Unreported).
CAPITAL GAINS -	54, 54F.	Cost of vacant land appurtenant to and forming part of a residential unit is to be considered for claim of	Narendra Mohan Uniyal	(2009) 34 SOT 152



RESIDENTIAL HOUSE – LAND APPURTENANT		exemption u/s. 54F, even if no construction has been done on appurtenant land.		(Delhi).
CAPITAL GAINS – SALE OF ADDITIONAL FSI	2(47), 45, 48, 55(2)(A)	Right to make additional construction on acquisition of additional FSI by operation of Development Control Regulation ,1991 having no cost of acquisition to assessee receipt on transfer thereof was capital receipt and could not be charged to tax as capital gains.	Maheshwar Prakash Co –Operative Housing Society Ltd	(2009) 121 TTJ 641 (Mum)
CAPITAL GAINS - SHORT TERM OR LONG TERM - DISSOLUTION – PERIOD OF HOLDINGS	2(42A), 49(1)(iii)(b).	On dissolution the property was taken over by the partner. Partner sold the property within three days of acquiring it. Sale has to be treated as short term. The benefit of s. 49(1)(iii)(b) is not available.	P.P. Menon	(2009) 31 DTR 159 (Ker).
CAPITAL GAINS - SLUMP SALE	48, 50, 50A.	Sale proceeds received by the from sale of a going concern of one division of assessee, which was slump sale and not a sale of block of assets, s. 50 was not applicable.	Max India Ltd.	(2009) 319 ITR 68 (P&H).
CAPITAL GAINS - SLUMP SALE - COST OF ACQUISITION	45, 50	Cost of acquisition of business, transferred lock, stock and barrel being ascertainable even according to assessee’s own admission before CIT(A). CIT(A) was justified in holding that the transaction was exigible to capital gains tax, however, as assessee was unable to establish any cost of improvement no benefit on that account will be allowable.	CEAT	(2009) 24 DTR 445 (Mum)(Trib).
CAPITAL GAINS – SPECULATION BUSINESS	73	Assessee company earning income from the sale of shares. AO holding that income earned was from speculation and on the fact it was held that income earned was in the nature of capital gains.	Axis Capital Markets (India) Ltd.	ITA No. 4098/Mum/2007 BCAJ January (2010) Vol. 41-B.
CAPITAL GAINS - STAMP VALUATION	45, 50C	When sale consideration is less than the price determined by stamp valuation authority, assessing officer has no option but to adopt the valuation made by the stamp valuation authority.	Mohd. Shoib	(2010) 1 ITR 452 (AT) 127 TTJ 459 (Lucknow)
CAPITAL GAINS - STOCK OPTION- SHORT TERM OR LONG TERM	2(42A), 2(42B), 17(2), 48, 54EA, 112	It is the date of grant of the stock option in favour of the assessee that is material for determining the period of holding the asset in question and not the date on which the option was exercised and stock options were converted in to shares. Capital gains arising out of sale of shares acquired through ESOPs have to be assessed as long term capital gains with consequential benefit of indexation and exemption u/s. 54.	. Dhurjati Gupta (Dr)	(2010) 33 DTR 287 (Hyd)(Trib)
CAPITAL GAINS – SURRENDER OF TENANCY RIGHTS	45	Cost of improvement incurred shown in the assessee’s books of account as stock-in-trade. One property was taken on rent by the assessee at Delhi. Thereafter, the assessee made improvements in the said rented premises and retained the same for more than five years. The assessee showed the said property as inventory in its balance sheets for	Hitesh Estates Ltd.	(2009) 313 ITR 393 (Delhi)



		<p>several years.</p> <p>On appeal to High Court, the High Court held that no fault could be found with the reasoning of the Tribunal. No perversity in its findings has been pointed out consequently, hence, the appeal is dismissed.</p>		
CAPITAL GAINS – TDR	45 & 48	<p>Amount received by the society from the builder for permitting him to construct additional floors on existing building of the society by utilizing TDR FSI belonging to him is not chargeable to tax since there is no cost of acquisition.</p> <p>Consideration received for permission to use TDR / FSI not chargeable to tax as the cost of acquisition being nil.</p>	Om Shanti Co-op Hsg. Society Ltd.	ITA No. 2550/Mum./2008. BCAJ January (2010) Vol. 41-B
CAPITAL GAINS - TRADE MARK	2(42A), 47(iv), 48 & 49(I)(iii)(e)	Transfer of trade marks being transfer of capital asset, gains arising there from chargeable to capital gains tax. Cost of acquisition being indeterminable long-term capital gains is not liable to any tax. Matter remanded to decide the period of holding and to tax gains if held to be short term gains.	Trent Brands Ltd.	(2010) 127 TTJ 65 (Del) (UO).
CAPITAL GAINS - TRADE MARK – BRAND	45, 55(2)	<p>Sale receipts on account of transfer of 'Trade mark' or 'brand' would not be liable to Capital Gains tax in relevant year i.e. AY 2001-02 as amendment to s. 55(2) was introduced w.e.f. 1-4-2002.</p> <p>Bombay Oil Industries Ltd. vs. Dy. CIT (2009) 28 SOT 383 (Mum).</p>	Bombay Oil Industries Ltd.	(2009) 28 SOT 383 (Mum).
CAPITAL GAINS- COMPUTATION	48, 112(1)	Benefit of the proviso to s. 112(1) could not be denied to non residents / foreign companies even if they are entitled to a different relief in terms of the first proviso to s. 48.	Four Star Oil & Gas Co.	(2009) 21 DTR 50 (AAR).
CAPITAL GAINS- CONVERSION OF FIRM IN TO COMPANY	45(4)	S. 45 (4) would not apply in case of transfer at book value of assets and liabilities of a firm to a company and allotment of shares to erstwhile partners in proportionate to their capital. No transfer by way of distribution of capital assets from the credit in partners' capital account, the resultant capital gain is nil and nothing is chargeable.	Aum Chemicals	(2009) 20 DTR 502 121 TTJ 933 119 ITD 21 (Mum).
CAPITAL GAINS – COST OF ACQUISITION – NON COMPETE FEES	48, 55(2)	Assessee being an investment company and not engaged in manufacturing cement, payment of non-compete fees made by it to the promoters investing company restraining them from carrying any business in cement had no nexus with the acquisition of shares of that company by the assessee and therefore the said payment cannot be treated as cost of acquisition of that shares of that company by the assessee and therefore the said payment cannot be treated as cost of acquisition or cost of improvement of the shares for the purpose of computing the capital gain arising on sale of said shares.	ICL Securities Ltd	(2009) 25 DTR 163 123 TTJ 728 (Chennai) (TM).
CAPITAL GAINS- INDEXATION -	48, 111A, 112,	A Foreign Institutional Investor has to be assessed with regard to capital gain/loss u/s. 115AD, and is	Advantage Advisors	(2009) 33 SOT 46 (Bom).



FOREIGN INSTITUTIONAL INVESTOR	115AD	not entitled opt out of provisions of said s. and claim to be assessed u/s. 48, read with s. 112, with indexation provisions in case of assessment resulting in to capital loss.	INC	
CAPITAL GAINS – NON RESIDENT - COST OF ACQUISITION	55(2)(b)	Assessee is entitled to the benefit of adopting the fair market value as on 1 st April 1981 as its cost of acquisition while computing the income for long term capital gain. Further the Assessee had adopted the value of the bonus share allotted in the years 1988 and 1998 at nil. Accordingly the matter is remitted back to the AO for the purpose of recalculating the amount of capital gain.	Chicago Pneumatic Tool Company	(2009) 25 DTR 24 (Mum)(Trib).
CAPITAL GAINS-REFERENCE TO VALUATION OFFICER	50C.	In the event of the assessee contending that valuation as done by Stamp valuation Authority is not acceptable to him and asking the AO to make a reference to the valuation officer, it is mandatory on the part of the AO to make such a reference notwithstanding that the assessee has not filed an appeal against such valuation	Kalpataru Industries	265 (2009) 41 – B. BCAJ December 32
CAPITAL GAINS – RETIREMENT OF PARTNER	45(4)	S. 45(4) has no application in the case of retirement of one partner. Capital gain is not chargeable to tax on the facts of the case also for the reason that the transfer of property to the retiring partner was necessitated on account of family arrangement to avoid a possible dispute.	Goyal Dresses	(2009) 30 DTR 75 (Chennai)(Trib).
CAPITAL GAINS-SHORT TERM OR LONG TERM-PERIOD OF HOLDINGS	2(42A), 49(1)(iii)	The assessee was partner in a partnership firm. The firm was dissolved on 15-4-2001 and the building was taken over by the assessee. The assessee sold the building on 18-4-2001. The assessee considered the period held by the firm and treated as long term. The court held that since the assessee sold the property within three days from acquiring it, property it has been rightly treated as short term capital asset.	P.P. Menon	(2009) 183 Taxman 242 (Ker).
CAPITAL GAINS-STAMP DUTY VALUATION	50C.	If there is objection from assessee's side regarding sale consideration without challenging stamp duty valuation, then valuation should be referred to valuation officer who is an expert and who can do correct valuation.	Ajmal Fragrances & Fashions (P) Ltd.	(2009) 34 SOT 57 (Mum).
CAPITAL GAINS VIS-À-VIS BUSINESS INCOME – SALE OF AGRICULTURAL LAND AS RESIDENTIAL SITES	2(13), 28(i) 45 & 54EC	Assessee had purchased a small piece of agricultural land and carried on agricultural operations on it. Assessee held the said land for more than 40 years which showed that they did not intend to trade in the land. It was held that mere fact that the assessee obtained permission from the authorities for developing residential sites cannot lead to the conclusion that this was an adventure in the nature of trade.	D.N. Krishnappa	(2009) 21 DTR 11 (Bang)(Trib.)
CAPITAL GAINS-CHARGEABILITY	45, 48	Transfer of shares under transfer agreement as part of implementation of the reorganisation plan following bankruptcy proceedings, the	Dana Corporation	(2009) 32 DTR 1 (AAR).



		consideration, if any is indeterminable and, therefore charging provision of s. 45, not applicable such transfer of shares is not chargeable to tax as capital gains.		
CAPITAL LOSS - TRANSFER – FORFEITURE	2(47), 45	Forfeiture - Cancellation of allotment of shares on failure to deposit call money is “transfer” within the meaning of s. 2(47) and consequent forfeiture of earnest money amounted to short term capital loss.	BPL Sanyo Finance Ltd	(2009) 223 CTR 461 23 DTR 75 (Karn).
CAPITAL LOSS OR BUSINESS LOSS	50 vis-à-vis 32(1)(iii)	On transfer of depreciable asset the excess shall be deemed to be short-term capital gain u/s. 50 whereas loss arising of out of such transfer is allowable as deduction u/s. 32(1)(iii), provided such loss/deficiency is actually written-off in the books of account of the assessee.	Mukund Global Finance Ltd.	(2009) 309 ITR 294 (AT) 117 ITD 20 (Mum).
CAPITAL OR REVENUE - EXPENDITURE ON REPAIR - LEASED PREMISES - DEPRECIATION	30(a)(ii), 32(i) EXPLN. 1 & 37(i)	In case of expenditure on leased premises in order to make it fit for assessee’s business, if any extra facility was created by way of brick works and connected expenditure, the same would be a capital expenditure eligible for depreciation under explanation 1 to s. 32(1) and if not, the expenditure would be revenue in nature covered by s. 30(a)(ii).	EDS Electronic Data Systems (India) (P) Ltd.	(2009) 23 DTR 10 (Del)(Trib).
CAPITAL OR REVENUE – NEW TECHNOLOGY	37(1)	Expenditure incurred in acquiring new technology to replace existing technology is allowable as revenue expenditure	Unidyne Energy Env System Pvt. Ltd.	ITA No. 4007/Mum /2005, Bench – G, A. Y. 2001-02, dt. 10-9-2008 BCAJ p. 796, Vol. 40-B, Part 6, March 2009.
CAPITAL OR REVENUE – REPLACEMENT OF PART OF MACHINERY	37	Expenditure on replacement of parts of machinery is allowable revenue expenditure.	Comsat Max Ltd.	(2009) 124 T TJ 86 29 SOT 436, 25 DTR 417(Del).
CAPITAL OR REVENUE EXPENDITURE	37.	Payment of royalty at rate calculated, per piece of production is revenue expenditure.	Sharada Motor Industries Ltd.	(2009) 319 ITR 109 (Delhi).
CAPITAL OR REVENUE EXPENDITURE - CONVERTIBLE DEBENTURE	37	Even if the debenture has to be converted in to a share at a latter date, the expenditure incurred in connection with issue of debentures has to be treated as revenue expenditure.	ITC Hotels Ltd.	(2009) 32 DTR 215 (Kar).
CAPITAL OR REVENUE EXPENDITURE – REPAIRS - REMOVAL OF DEFECT	37	Expenditure incurred for restoring roof to original condition is not a capital expenditure. Expenditure on removal of defect in design of car, relates to stock in trade of assessee is not a capital expenditure.	Honda Siel Cars India Ltd.	(2010) 1 ITR 497 (Delhi) (Trib).
CAPITAL OR REVENUE EXPENDITURE – SOFTWARE	37	Expenditure incurred on computer software packages though gives an enduring benefit it does not result in acquisition of any capital asset and constitutes revenue expenditure.	Southern Roadways Ltd.	(2008) 220 CTR 298 (Mad).



CAPITAL OR REVENUE EXPENDITURE- MEMBERSHIP CARD OF STOCK EXCHANGE	2(14)	Membership card of stock exchange is a capital asset and therefore any expenditure incurred to acquire said card is capital in nature.	Khandwala Finance Ltd.	(2010) 122 ITD 111 (Mum)
CAPITAL OR REVENUE RECEIPT - FOREIGN EXCHANGE FLUCTUATIONS	4	Gains on account of foreign exchange fluctuations in respect of share capital collected in foreign exchange is capital receipt.	Jagatjit Industries Ltd.	(2009) 32 DTR 168 (Del).
CAPITAL OR REVENUE RECEIPT - FORFEITURE OF LOAN AMOUNT	4, 2(28)(1)	Amount initially received as loan for setting up business would not become business income chargeable to tax by its being taken to reserve and surplus account by assessee by forfeiture.	Velocent Technologies Ltd.	(2009) 120 TTJ 659 (Del).
CAPITAL OR REVENUE: FOREIGN EXCHANGE RATE FLUCTUATION	37	It was held that loss on account of foreign exchange rate fluctuation allowable.	L.G. Electronics India P. Ltd.	(2009) 309 ITR 265 (Delhi)
CAPITAL RECEIPT - COMPENSATION FOR TERMINATION OF AGENCY AGREEMENT	4	Termination of an agency agreement which has no major effect on profit earning apparatus, the compensation received is taxable as revenue receipt but the part of the compensation which is attributable to restrictive covenant is capital receipt and not chargeable to tax.	Chemet	(2009) 122 TTJ 766 (Mum).
CAPITAL RECEIPT - INTEREST EARNED BY PARKING SURPLUS FUNDS IN BANK	4	Prior to commencement of business interest earned by parking surplus funds in bank, constitutes a capital receipt and hence is eligible for being set-off against pre-operative expenses.	Indian Oil Panipat Power Consortium Ltd.	(2009) 181 Taxman 249 20 DTR 107 (Del).
CARRY FORWARD AND SET-OFF- UNABSORBED DEPRECIATION	10A	In view of s. 10A(6) by the finance Act, 2003, unabsorbed depreciation relating to asst. yr. 1993-94 and 1995-96 of an industrial unit located in free trade zone cannot be set-off against income of the unit for the asst. yr. 2003-04.	Phoenix Lamps Ltd.	(2009) 30 DTR 245 126 TTJ 945(Del)(Trib).
CASH CREDIT	68	Loan amount received in earlier year converted into gift in later year is a valid gift.	Haresh A. Dhanani	ITA No. 5850/Mum/2008, dt. 22-5-2009 BCAJ p. 43, Vol. 41A, Part 6, September, 2009.
CASH CREDIT - CAPITAL CONTRIBUTION BY PARTNERS	68, 69	Capital contribution made by the partners on the first day of the commencement of the business could not be added in the hands of the firm. However, if the partners fail to discharge the onus of proving the source of such deposits by them in the firm, then the same could be added to the income of the partners concerned in term of s. 69 of the Act.	Kewal Krishan & Partners	(2009) 18 DTR 121 (Raj).
CASH CREDIT - REJECTS OF BOOKS OF ACCOUNTS	68, 145(3)	Where the assessing officer rejected the books of accounts maintained by the assessee and estimated the income by invoking provisions of s. 145(3) of the Act, no separate addition of cash credit u/s. 68	G.K. Contractor	(2009) 19 DTR 305 (Raj).



		of the Act can be made in such case even though the assessee has failed to discharge the onus of explaining the credits in its books of account.		
CASH CREDIT – SHARE APPLICATION MONEY	68	Where the identity of the shareholders were established, all the shareholders were income tax assesseees and disclosed the transaction in their accounts which were reflected in their income–tax return also, simply because the monies were received as share application money by a private limited company in cash, the same cannot be treated as cash credit u/s. 68 of the Act.	Bhav Shakti Steel Mines (P) Ltd.	(2009) 18 DTR 194 (Del).
CASH CREDIT – SHARE APPLICATION MONEY	68	Share application money was received by the assessee through account payee cheque from a Company which is regularly assessed to tax and having a substantial amount of paid up capital. Further, the subscribing Company was also a member of the National Stock Exchange (NSE) and involved in purchase and sale of shares of other Companies. The onus in respect of veracity and genuineness of the transaction was held to be established and additions u/s. 68 of the Act was not sustainable.	Gangour Investments Ltd.	(2009) 18 DTR 242 (Del).
CASH CREDIT – SHARE APPLICATION MONEY	68	Where the identity and creditworthiness of the subscriber to the shares and the genuineness of the transaction is established, share application money received by the assessee cannot be added u/s. 68 of the Act as unexplained cash credit.	Samir Bio–Tech P. Ltd.	(2009) 17 DTR 224 (Del).
CASH CREDIT – SHARE APPLICATION MONEY	68	Share Application money – Existence of applicants accepted. AO has not shown that the Applicants did not have means to make the investments and that such investments actually had come from the coffers of the Assessee Company. Addition is rightly deleted.	Value Capital Service (P) Ltd.	(2008) 307 ITR 334 221 CTR 511 (Del).
CASH CREDIT – SHARE CAPITAL	68	Where the assessee had furnished complete details of shareholders name, addresses, Permanent Account Number (P.A.N.), bank details and confirmations of subscribers to its shares before the AO, action of treating the share capital as unexplained cash credit u/s. 68 cannot be sustained.	TDI Marketing (P) Ltd.	(2009) 26 DTR 358 (Del).
CASH CREDIT – SOURCE OF SOURCE	68	The AO is not permitted to examine the source of source, once the assessee has been able to establish that the transactions with his creditors are genuine and the creditors identities and creditworthiness have been established.	Diamond Products Ltd.	(2009) 177 Taxman 331 21 DTR 9 (Delhi).
CASH CREDITS - GIFT FROM BROTHER	68	Addition u/s. 68 cannot be made in respect of gift received from his real brother by cheque who had annual income of more than Rs. 6.65 lacs, assessed to tax and sufficient creditworthiness.	Sarv Prakash Kapoor	(2009) 24 DTR 91 119 ITD 197 124 TTJ 433 (Agra) (TM) (Trib.)
CASH CREDITS – BURDEN OF PROOF – GIFT	56	Donee to establish not only the identity of donor but also his capacity to make a gift and actual receipt from him. Financial position of donor not suggesting his capacity to make gift or source from	Yash Pal Goel	(2009) 310 ITR 75 181 Taxman 175 (P&H).



		where gift made. Donor never visited house of assessee. Hence there was no love and affection. Transaction was not genuine, hence amount claimed as gift assessable as income of assessee.		
CASH CREDITS – GIFT	68	The assessee and his family members received huge gifts from a person who was residing abroad. The said gifts were made out of natural love and affection towards the assessee and his family members. The assessee had also produced the copies of gift deeds and the affidavits of the donors. The said gifts were made through Bank accounts of the donor who had sufficient cash balance on the date of the gifts. In spite of this, the learned AO made the addition u/s. 68 of the I.T. Act. The High Court held that there was no legal basis to assume that to recognize the gift to be genuine, there should be any blood relationships, or any close relationship between the donor and the Donee. The Department did not have any evidence to show that the act of the assessee in claiming gift was an act by way of money laundering.	Pam Singh Chouhan	(2009) 315 ITR 433 (Raj.)
CASH CREDITS – LOANS	68	When particulars regarding income tax assessments and bank accounts had been filed, initial burden on assessee u/s. 68 had held discharged burden shift on revenue to show that what was stated or explained by assessee was not satisfactory.	Kalyan Memorial & Charitable Trust	(2009) 121 ITD 525 (Agra) (TM).
CASH CREDITS – NRE - FOREIGN EXCHANGE (IMMUNITIES) SCHEME, 1991	68	Sum received from NRE account of non-resident Indian is entitled to immunity under Remittances of Foreign Exchange and Investment in Foreign Exchange Bonds (Immunities and Exemptions) Act, 1991. Addition as cash credit can not be made.	Amritlal S. Punamiya HUF	(2010) 1 ITR 242 (Mumbai) (Trib)
CASH CREDITS- GIFTS	68.	Assessee had filed, confirmation, of the person from whom the gift was given. Genuineness of the transaction of gift and the capacity of the donor stood established. Addition can not be made u/s. 68.	Asha Hampannavar	SLP (Civil No. 16370 of 2009 Dt. 14-7-2009. (2009) 319 ITR 5 (St.)(SC).
CASH CREDITS- SURRENDER OF AMOUNT BY LETTER	68	Letter written by assessee might not be treated as representing the income unless supported by probative evidence against the assessee. Matter set a side to for verification of facts.	Rakesh Agrwal (Dr)	(2009) 121 ITD 575 (Agra) (TM).
CHARITABLE OR RELIGIOUS TRUST	11.	A trust established to carry out partly charitable purposes and partly religious purposes would be entitled to exemption u/s. 11.	Society of Presentation Sisters	(2009) 121 ITD 422 (Cochin) (TM).
CHARITABLE OR RELIGIOUS TRUST - CONDONATION OF DELAY	12A, 12AA	Since objects of trust and genuineness of its activities were not in doubt in as much as registration was granted with retrospective effect from 1-4-2007 and reasons for delay for filing of application were not false or untrue delay was required to be condoned.	Church of Our Lady of Grace	(2009) 34 SOT 315 (Mum).
CHARITABLE PURPOSE	11	The High Court held that for the purpose of carrying out the objectives of the trust, the trust borrowed fund from the Bank for augmenting Income in order to carry out the objectives of the	Govindu Naicker Estate	(2009) 315 ITR 237 (Mad).



		trust as envisaged and for that purpose, has to incur expenditure, which is capital in nature by raising loan. The capital asset built with borrowed fund, under no circumstances, could be regarded to be outside the scope of its objectives. If raising of loan does not stand in the way of its charitable activities the repayment thereafter must be treated as application of its income. Hence, trust was eligible for exemption u/s. 11 of the I.T. Act, 1961.		
CHARITABLE PURPOSE	11 & 13	Assessee a charitable trust constructed a building by borrowing funds from outside as well as investing its own corpus funds. The building so constructed was let out to a concern in which its trustees were directors. The rental income so received by the trust was utilised for the purpose of repaying the loan. AO held that the assessee was not entitled to benefit u/s. 11 and 12 of the Act as the rental income received by the assessee was not utilised for the object of the trust and also that the building so constructed was let out to the concerned in violation of s. 13(1)(c) of the Act. On these facts the Hon'ble High Court held that the income derived from renting out the building was used for repayment of loans with the ultimate object of applying the income, after the loans had been fully repaid, towards charitable objects of the trust. Therefore the application of rental income for the repayment of loan was towards charitable object. Further, the rent received by the trust was more than the standard rent as computed under the rent control laws, as such, no benefit was derived by any interested person, therefore provisions of s. 13(1)(c) were also not attracted.	Span Foundation	(2009) 17 DTR 283 (Del).
CHARITABLE PURPOSE	11, 13.	No distinction is made between charitable and religious purposes in s. 11(i)(a), and therefore, a trust which is partly religious and charitable is entitled to exemption u/s. 11(1)(a), even otherwise, maintenance, of mosque and church is to be treated as charitable purpose and not purely religious purpose and therefore, exemption u/s. 11(1)(a) could not be denied to the assessee trusts which exist for various charitable purposes besides maintenance of chapels and mosques, on the ground they are partly charitable and partly religious trusts, once no case is made out for application of provisions of s. 13.	The Society of Presentation Sisters	(2009) 30 DTR 1 (Coch) (TM)(Trib).
CHARITABLE PURPOSE – EDUCATIONAL ACTIVITIES	2(15), 12A, 12AA(3)	Provision of teaching to students in preparation after admission to professional institutions. No evidence to show registration obtained by fraud or forgery. Cancellation of registration on ground of profit motive not permissible.	Oxford Academy for Career Development	(2009) 315 ITR 382 (Cal).
CHARITABLE PURPOSE – EXEMPTION –	2(15), 11, 12	In the present case, even if the assessee did not render medical services in all cases to poor people, yet it would not fall out of the ambit of the definition of 'Charitable Purpose' u/s. 2(15) of the	Kaushalya Medical Foundation (Mum.)	(2009) 31 SOT 119 (Mum).



CONDITIONS OF CHARITABLE / RELIGIOUS PURPOSE FULFILLED – EXEMPTION AVAILABLE		Act. The relief would be still available to the assessee and the exemption u/ss. 11 and 12 of the Act was rightly availed by them.		
CHARITABLE TRUST – REGISTRATION	12A	The Tribunal is fully justified in observing that the manner of application of funds and as to whether the applicant-assessee can claim benefit of exemption in terms of s. 11 and 12 is a question which has to be examined by the AO at the stage when it is urged and not by the CIT when such question is not before the CIT. The emphasize that while registration is accordance with the provisions of s. 12, it is a condition precedent for claiming the benefits u/s. 11 and 12, a registration itself as per s. 12A will not automatically confer the benefits of s. 11 and 12 on a trust, but the trust will get the benefit only on complying with the requirements of s. 11 and 12 which compliance can be examined by the assessee authority, while processing the return filed by the trust.	Garden City Education Trust	(2009) 28 DTR 139 (Kar).
CHARITABLE TRUST – REGISTRATION U/S. 12A	2(15), 12A & 12AA	Imparting education with the primary purpose of earning profits cannot be said to be a charitable activity for the purpose of Registration u/s. 12AA.	National Institute of Aeronautical Engineering Educational Society	(2009) 226 CTR 582 (Uttarakhand).
CHARITABLE TRUST – S. 11	11	The CIT rejected the application for condonation of delay in filing Form No. 10, before the expiry of time allowed u/s. 139(1) of the Act, being notice for accumulation of income by the trust. On writ filed by the assessee trust the High Court considering the fact that the assessee was a State Government undertaking and has been registered u/s. 12A of the Act since many years and also the fact that the delay in filing Form No. 10 was because the chartered accountant of the trust was not able to finalize the accounts in time, the High Court quashed the order of the CIT and directed him to pass appropriate orders.	Kerala Rural Employment & Welfare Society	(2009) 18 DTR 300 (Ker).
CLUBBING OF INCOME – TOTAL INCOME	28(v), 64(1)(ii)	Assessee and his wife partners in a firm. Assessee's wife getting allowance from firm in terms of partnership deed and shown the income in her return as business or profession. Assessment of assessee's wife completed assessing the income u/s 28(v). Income can not be includible in the hands of assessee.	A.V. Jose	(2010) 1 ITR 88 (Cochin) (Trib)
COMMISSIONER (APPEALS) – POWER	251	There is no requirement for confronting AO in a situation where the Additional Evidences were filed before the CIT(A) under his direction.	Thoresen Chartering Singapore (Pte) Ltd.	(2009) 118 ITD 416 (Mum).
COMPANY - DIRECTORS LIABILITY	179	Recovery from directors of tax dues of assessee company u/s. 179 - Revenue having not established	Amit Suresh Bhatnagar	(2009) 221 CTR 70 183 Taxman 287 (Guj).



		that a director or directors were responsible for the conduct of the company and taken no effective steps to effect recovery of outstanding dues from the company, impugned order made u/s. 179 in the case of the three petitioners directors is quashed and set aside.		
CONCESSION OF LAW- ADMISSION-BINDING EFFECT	143(3)	Admission or concession by a counsel made inadvertently or under a mistaken impression of law will not only bind on his client, but also same can not ensure to the benefit of other party. Party can resile from such concession.	K.S. Suresh	(2009) 319 ITR 1 32 DTR 217(Mad).
CONTRACTUAL PAYMENT – PARTNERSHIP FIRM	28	Contractual payment made by the assessee firm to its retiring partners, in terms of partnership deed, is not includible in the total income of the assessee since to that extent income has never reached the hands of the assessee.	RSM & Co.	ITA No. 3269/Mum./2007, January (2010) BCAJ Vol. 41-B
DEDCUTION-MANUFACTURE – SHIP BREAKING ACTIVITY	80HH, 80-I	The Supreme Court held that assessee was entitled to deduction u/s. 80HH and 80I in respect of profits from ship breaking activity, because the ship breaking activity gave rise to a distinct and different article.	Vijay Ship Breaking Corporation and Other	(2009) 314 ITR 309 (2008) 175 Taxman 77 (SC)
DEDCUTION-MANUFACTURE OR PRODUCTION - ACTIVITY OF RAILWAY LINE IS CONSTRUCTION ACTIVITY AND CANNOT BE AMOUNTED TO MANUFACTURE OR PRODUCTION ACTIVITY	80HH, 80I	The activity of laying down railway line does amount to construction activity and not manufacture or production. The assessee was seeking benefit on the ground that the strength of manufacturing activity carried on by the assessee i.e. manufacturing of numerous parts, components etc. which go into the working and operational railway tracks. The matter to be remitted for fresh consideration as per the parameters laid down by the Supreme Court in N. C. Budharaja and the impugned order of the Tribunal is set aside.	Indian Railways Construction Co. Ltd.	(2009) 24 DTR 130 (Del.)
DEDUCTED AT SOURCE – LEAVE TRAVEL CONVEYANCE	192	Where the assessee-employer allowed the employees the benefit of deduction u/s. 10(5) of the Act without collecting evidence to show that its employees had actually utilized the amounts paid towards Leave Travel Concessions / Conveyance Allowance it was held that as the beneficiary of exemption u/s. 10(5) is an individual employee and there is no circular of the Central Board of Direct Taxes (CBDT) requiring the employer u/s. 192 to collect and examine the supporting evidence to the Declaration to be submitted by an employees, the employer was not at fault.	I.T.I. Ltd.	Civil Appeal No. 989 of 2005 - dated 21st January, 2009 Source : www.itatonline.org
DEDUCTION - CUTTING & POLISHING MARBLE BLOCKS IS “PRODUCTION” FOR S. 80-IA	80IA	The assessee was engaged in conversion of marble blocks into slabs and tiles by sawing and polishing. The question was whether this amounts to “manufacture or production of article or thing” for purposes of deduction u/s 80IA. HELD, in favour of the assessee	Arihant Tiles & Marbles	(2010) 186 Taxman 439 32 DTR 101 227 CTR 513. 320 ITR 79(SC)



DEDUCTION – BUSINESS EXPENDITURE - SHARE OF PARTNER IN PARTNERSHIP FIRM	10(2A), 14A. Rule 8D & 28(V).	Partnership firm being a separate assessable, entity for the purpose of income tax Act. Income charged in the hands of partnership firm can not be treated as non exempt income in the hands of such firm and therefore, provisions of s. 14A, are applicable in computing the total income of such partner in respect of his share in profits of the firm. Assessee partner having received salary from the partnership firm besides share of profit, disallowance u/s. 14A has to be worked out as per the provisions of rule 8D same being retrospective.	Dharamsingh M. Popat	(2009) 31 DTR 295 (Mumbai) (Trib).
DEDUCTION - BUSINESS EXPENDITURE – DISALLOWANCE - ABSENCE OF EXEMPT INCOME IN THE RELEVANT YEAR	14A	Disallowance u/s. 14A, can be made in a year in which no exempt income has been earned or received by the assessee. Editorial - See, ITO v Daga capital Management P. Ltd. (2009) 312 ITR 1 (AT)(Mumbai)(SB).	Cheminvest Ltd.	(2009) 124 TTJ 577 317 ITR 86 (AT) 27 DTR 82 121 DTR 318(Del)(SB).
DEDUCTION – COMMERCIAL INFORMATION – SHIPPING AGENT	80–O	Assessee a shipping agent, supplying information to foreign ship-owners regarding availability of cargo is providing commercial information and is entitled to deduction u/s. 80–O, mere deduction of the commission in foreign exchange by the assessee before sending the entire consideration to the foreign ship-owners does not change the character of receipt of commission earned in foreign exchange.	Chakiat Agencies (P) Ltd.	(2009) 314 ITR 200 224 CTR 286 (Mad).
DEDUCTION - COMPUTATION – ELIGIBLE INDUSTRIAL UNITS	80A, 80B(5) & 80IB	Loss in one unit can not be set off against of other unit, it is a mandatory to work out the eligible amount of deduction under various sections of Chapter VI-A, individually and then such aggregate amounts has to be restricted to the amount of gross total income as computed u/s. 80IB(5).	Meera Cotton & Synthetic Mills (P) Ltd.	(2009) 28 DTR 139 (Mumbai)(Trib).
DEDUCTION – CO-OPERATIVE SOCIETY	80P	The Supreme Court held that the burden is on the assessee to establish that the income comes within the four corners of s. 80P(2)(e). The deduction is available only in respect of income derived from letting of godowns or warehouses, where the purpose is for storage, processing or facilitating the marketing of commodities. The Supreme Court confirmed the order of the High Court where it had held that the assessee was storing the goods in the godowns for its own trading activity and hence not eligible for deduction u/s. 80P.	Udaipur Sahkari Upbhokta Thok Bhandar Ltd.	(2009)26 DTR 82 315 ITR 21 (SC).
DEDUCTION – DEPB	80HHC	(i) The argument of the Revenue that DEPB is a post export event and has no relation with the purchase of goods cannot be accepted. There is a direct relation between DEPB and the customs duty paid on the purchases. For practical purposes, DEPB is a reimbursement of the cost of purchase to the extent of customs duty; (ii) The DEPB benefit (face value) accrues and	Topman Exports	(2009) 318 ITR 87 (Mum) (SB)(AT).



		<p>becomes assessable to tax when the application for DEPB is filed with the concerned authority. Subsequent events such as sale of DEPB or making imports for self consumption etc are irrelevant for determining the accrual of the income on account of DEPB;</p> <p>(iii) Though s. 28(iiib) refers to a “cash assistance against exports”, it is wide enough to cover the face value of the DEPB benefit;</p> <p>(iv) S. 28(iiid) which refers to the “profits on transfer of the DEPB” obviously refers only to the “profit” element and not the gross sale proceeds of the DEPB. If the Revenue’s argument that the sale proceeds should be considered is accepted there would be absurdity because the face value of the DEPB will then get assessed in the year of receipt of the DEPB and also in the year of its transfer;</p> <p>(v) Consequently, only the “profit” (i.e. the sale value less the face value) is required to be considered for purposes of s. 80HHC.</p>		
DEDUCTION - DERIVED FROM – EXCISE DUTY REFUND - INTEREST SUBSIDY - INDUSTRIAL UNDERTAKING	80IB	Excise duty and interest subsidy have no first generation or proximate nexus or source, which is essential for any profit to be treated as ‘derived from’ the industrial undertaking and therefore such receipts are not eligible for deduction u/s. 80IB.	Shree Balaji Alloys	(2010) 33 DTR 67 (Asr) (Trib)
DEDUCTION – DEVELOPER VIS A - VIS CONTRACTOR	80IA	Deduction u/s. 80IA is available to a developer and not to a contractor. Editorial Note : Radhe Developers vs ITO (2008) 23 SOT 420 (Ahd)	East Cost Constructions & Industries Ltd.	(2009) 23 DTR 225 (Chennai)(Trib).
DEDUCTION – DISALLOWANCE OF EXPENDITURE	14A	Any expenditure incurred by the assessee bank for investing in the bonds, even tax free was expenditure incurred for carrying on its business, so as to maintain the required statutory liquidity ratio and tax free interest is just an incidence to it. Thus, s. 14A had no application in the case of the assessee.	State Bank of Travancore	(2009) 318 ITR 171 (AT) (Cochin)
DEDUCTION - DISALLOWANCE OF EXPENDITURE IN RELATION TO EXEMPTED INCOME	14A	Assessee acquired the shares using its own funds, no interest expenditure incurred disallowance u/s. 14A can not be made.	Winsome Textile Industries Ltd.	(2009) 319 ITR 204 (P&H).
DEDUCTION – DISALLOWANCE OF EXPENDITURE IN RELATION TO EXEMPTED INCOME	14A	Interest could be disallowed only to the extent of loan invested in shares.	Sushma Kapoor (Mrs.)	(2009) 32 DTR 212 (Del).
DEDUCTION -	80HHC /	The assessee’s income was computed u/s. 115JB as	Glenmark Laboratories	www.itatonline.org



<p>EXPORT - DEDUCTION IS ALLOWABLE FOR S. 115JB EVEN IF THERE ARE NO NORMAL PROFITS</p>	<p>115JB</p>	<p>it had no income under the normal provisions of the Act. The assessee claimed that despite the absence of normal profits, it was eligible for deduction u/s 80HHC in computing the book profits under Expl. (iv) of s. 115JB in accordance with the judgment of the Special Bench in Syncome Formulations 106 ITD 193 (Mum) (SB) and that the judgment of the Bombay High Court in Ajanta Pharma 223 CTR 441 (Bom) (<i>which held that Syncome Formulations was overruled</i>) was not applicable. HELD upholding the assessee's plea:</p> <p>In Syncome Formulations, the Special Bench had to consider two questions i.e. (a) method of computation of deduction u/s. 80HHC and (b) percentage of deduction allowable in each year. As regards the percentage of deduction, the Special Bench held that the assessee would be entitled to 100% deduction. This view was overruled by the High Court in Ajanta Pharma where it was held that in view of s. 80HHC(1B), deduction was only allowable as per the limits set out therein. However, the first issue as to the method of deduction u/s 80HHC was not before the High Court. As per Sun Engineering 198 ITR 297, the observations of a Court have to be read in context. Consequently, the judgment of the Special Bench on this aspect still held good and the assessee was entitled to deduction u/s 80HHC even though there were no normal profits.</p>		
<p>DEDUCTION - EXPORT – FILING OF AUDIT REPORT</p>	<p>80HHC(4)</p>	<p>Report of Chartered Accountant is mandatory, however, need not be furnished along with return. It is sufficient if report is submitted before completion of assessment.</p>	<p>VXL India Ltd.</p>	<p>(2009) 312 ITR 187 (Guj).</p>
<p>DEDUCTION – EXPORT – NEW INDUSTRIAL UNDERTAKING - COMPUTATION</p>	<p>80AB, 80H, 80HHC, 80IA(9) 80IB(13)</p>	<p>Deduction to be allowed under any provision of Chapter VI-A with heading “C” (80H, 80HHC, etc.) is to be reduced by an amount of deduction allowed u/s. 80IA /80IB of the Act.</p> <p>Editorial.- View of CIT v Rogini Garments (2007) 108 ITD 49 (Chennai) is affirmed, ratio of SCM Creations v Asstt (2008) 304 ITR 319 (Mad) is explained.</p>	<p>Hindustan Mint & Agro Products (P) Ltd.</p>	<p>(2009) 119 ITD 10 123 TTJ 577 25 DTR 73 (SB)(Trib).</p>
<p>DEDUCTION - EXPORT - TELECASTING RIGHTS</p>	<p>80HHC</p>	<p>Telecasting rights of movies recorded on beta cam tapes being articles of trade and commerce fall in the category of merchandise and “lease” is included in the meaning of the word “sale” under Rule 9A and explanation of the films outside India by way of lease is entitled to deduction u/s. 80HHC.</p> <p>Judgment of Bombay High Court in Abdulgafar A. Nadiwala vs. ACIT & Ors. (2004) 267 ITR 488 (Bom.) approved.</p>	<p>B. Suresh</p>	<p>(2009) 20 DTR 93 178 Taxman 457 313 ITR 149 (SC).</p>
<p>DEDUCTION – FILING OF AUDIT REPORT</p>	<p>80I</p>	<p>If an assessee has filed the audit report after filing of return and before assessment, then its right to rely on said audit report can not be taken away.</p>	<p>Jenson & Nicholson India Ltd.</p>	<p>(2009) 23 DTR 289 (Cal).</p>



DEDUCTION – FILING OF AUDIT REPORT - MANDATORY OR DIRECTORY	80IA	Requirement of filing the audit report along with the return is not mandatory and if the audit report is filed at any time before the framing of the assessment, requirement of s. 80IA(7) would be met. Editorial Note : Refer CIT vs. Ramco International (2009) 221 CTR 491 (P&H)	Contimeters Electicals (P) Ltd.	(2009) 22 DTR 158 (Del).
DEDUCTION – FOREIGN ENTERPRISE - APPORTIONMENT OF EXPENSES	80O	Project relocation expenses which could be treated exclusively as domestic expenses and were, therefore, not to be taken into account for apportioning the same between the foreign expenses and domestic expenses while allowing deduction u/s. 80-O.	KSA Technopak (India) (P) Ltd.	(2010) 33 DTR 148 (Del.)
DEDUCTION – HOTEL BUSINESS	80HH	The Supreme Court held that for the purpose of claiming deduction u/s. 80HH, the assessee has to demonstrate that it was a processor which has outsourced some of the activities to its sister concern. In the present facts where there are no details of the process undertaken by the assessee and the sister concern, the deduction u/s. 80HH would not be available.	R. Pratap	(2009) 310 ITR 405 (SC).
DEDUCTION – HOUSING PROJECT - PERCENTAGE COMPLETION METHOD	80IB(10)	An assessee developing a housing project and fulfilling all other requirements of s. 80IB(10) can adopt “project percentage method” to arrive at the eligible profits for claiming deduction under the said section. Deduction can not be postponed to alter year i.e. on completion of project.	B.K. Pate Enterprises	(2009) 28 451 DTR 125 TTJ 974 (Pune).
DEDUCTION – HOUSING PROJECTS	80IB(10)	S. 80-IB(10) is aimed at promoting construction of housing projects so as to address the problem of shortage of dwelling units. It cannot be said that the object is to encourage house building activity per se, irrespective of whether these are dwelling or commercial units. The commercial use of area must be regarded as an integral part of a housing project and does not vitiate the character of a housing project. The approval by the local authority of a project as a “housing project” is conclusive and no further enquiry is required. Where commercial built up area does not exceed 10% of the total area eligible for the benefit, are predominantly residential in nature. Where the commercial area is more than 10% will not be eligible for deduction unless it can be shown that income from the residential dwelling units can be worked out separately and even after excluding the commercial use of plot, the project satisfies all the requirements of s. 80IB (10). Editorial Note: The Mumbai Tribunal Decision in case of Laukik Developers vs. DCIT 105 ITD 657 (Mum) overruled. The Bombay High Court has admitted the appeal of Laukik Developers	Bhrama Associates	(2009) 119 ITD 255 22 DTR 1 39 SOT 155 122 TTJ 433. (Pune) (SB).



DEDUCTION – HYPOTHETICAL TAX	10(10CC) & 16	The deduction on account of hypothetical tax liability is made under tax equalization and only reduces the tax perquisite of the employee and not his income. This aspect of the matter will be relevant in computation of perquisites when the same are to be computed with reference to the salary of the employee. The deduction to be made at the stage of computing the tax perquisite and not the basic salary. There will be no tax impact in this year on account of s. 10(10CC) in case hypothetical tax is reduced from tax perquisite instead of being reduced from the basic salary.	Lukas Fole	(2009) 28 DTR 210 123 TTJ 965 (Pune) (Trib).
DEDUCTION – INDUSTRIAL UNDERTAKING	80IA	Freight subsidy provided to the industries set up in remote areas where rail facilities are not available is not income derived from the business of the industrial undertaking and cannot be included in the profits eligible for deduction u/s. 80-IA.	Kiran Enterprises	(2010) 228 CTR 101 (HP)
DEDUCTION – INDUSTRIAL UNDERTAKING - EMPLOYMENT OF NEW WORKMEN	80JAA	Since in proviso, to clause (I) of Explanation to s. 80JAA expression 'existing number of workmen employed' has been used and not expression 'existing number of regular workman employed' for the purpose of computing deduction u/s. 80JAA ,percentage ,increase in number of regular workmen has to be determined with reference to existing number of workmen employed in industrial undertaking.	Panacea Biotech Ltd.	(2010) 122 ITD 199 (Delhi)
DEDUCTION – INDUSTRIAL UNDERTAKING – HOUSING PROJECT – AMNESTIES – DEDUCTION	80(IB)	Amenities provided by the assessee at the time of construction itself, though by way of a separate agreement, are to be treated as part of the housing project undertaken by the assessee. Deduction u/s 80(IB)(10) is allowable in respect of receipts for amenities. When there is direct nexus between the funds borrowed and funds advanced to sister concerns interest received on amounts advanced can be netted off against interest paid.	Vimal Builders	ITA Nos. 3646/Mum/2007 & 2730/Mum/2007, A.Y. 2003-04, dt. 28-7-2009. BCAJ p. 45, Vol. 41A, Part 6, September, 2009
DEDUCTION – INDUSTRIAL UNDERTAKING – REVISED RETURN	80IB	The Assessee inadvertently not claimed the deduction in its return though documents such as Form No. 10CCB were furnished during assessment proceeding. Deduction is admissible even in the absence of a revised return.	Ramco International	(2009) 221 CTR 491 17 DTR 214 (P&H)
DEDUCTION – INDUSTRIAL UNDERTAKINGS	80-IB, 80HHC	The assessee is not entitled to simultaneous deduction of both ss. 80HHC, and 80IB, while computing deduction u/s. 80HHC, in view of specific exclusion u/s. 80IB(13) hence deduction granted u/s. 80IB has to be excluded.	Olam Exports India Ltd.	(2009) 184 Taxman 373 (Ker).
DEDUCTION – INDUSTRIAL UNDERTAKINGS - INFRASTRUCTURE DEVELOPMENT- DEVELOPER – CONTRACTOR	80IA	Deduction u/s. 80IA is available to a developer and not to a contractor, assessee doing only contract works of insitu cement lining for water supply project of the Gujarat Water Supply and Sewerage Board is not a developer, hence not eligible for deduction u/s. 80IA.	Indwel Linnings (P) Ltd.	(2009) 122 TTJ 137 21 DTR 21 (Chennai)



DEDUCTION – INDUSTRIAL UNDERTAKINGS - JOB WORK.	80IB	Assessee doing job work in its industrial undertaking by utilizing the very same Machinery and labour, conversion charges in connection with such job work have a direct nexus with the manufacturing activity of assessee, hence “derived from” industrial undertaking eligible for relief u/s. 80IB.	Biotech Medicals (P) Ltd.	(2009) 121 TTJ 858 121 TTJ 858 119 ITD 143 (Hyd).
DEDUCTION – INDUSTRIAL UNDERTAKINGS – WORKERS	80IB	Assessee having filed the names of casual workers as well as the details of payments made to the casual workers and the total number of workers being more than ten relief u/s. 80IB could not be denied on the basis of number of employees recorded in the attendance register which did not include the names of casual workers.	Rajesh Kapila & Ors.	(2009) 22 DTR 569 (Mum) (Trib).
DEDUCTION – INSURANCE CLAIM – INCOME DIVIDEND	80HH	Insurance claim received on damage of imported component in transit is not an income derived from industrial undertaking for the purpose of deduction u/s. 80HH of the Act.	Fal Industries Ltd.	(2009) 27 DTR 157 (Mad).
DEDUCTION – INTEREST	80P	Interest on surplus funds is “other income” and not eligible for deduction u/s. 80P.	The Totgars’ Cooperative	www.itatonline.org
DEDUCTION – INTEREST	80P(2)(a)(i)	Interest income earned on surplus funds available with the society which are not immediately required by the assessee for its day to day banking business invested in KVP / IVP would be income from banking business eligible for deduction u/s. 80P(2)(a)(i) of the Act.	Solapur Nagari Audyogic Sahakari Bank Ltd. & Ors.	(2009) 26 DTR 67 (Bom).
DEDUCTION – INTEREST - EXPORT-ORIENTED UNDERTAKING	10B	Interest received from sister concern for advances made for purchases, is eligible for deduction u/s. 10B.	Hycon India Ltd..	(2009) 210 Taxation 289 185 Taxman 70 (Raj).
DEDUCTION – INTEREST – INCOME DIVIDEND	80HH	Interest received from the customers on delay in making payments for the goods purchased from the assessee is an income derived from the industrial undertaking for the purpose of calculating deduction u/s. 80HH of the Act.	Fal Industries Ltd.	(2009) 27 DTR 157 (Mad.)
DEDUCTION – INTEREST ON DELAYED PAYMENT OF PURCHASE PRICE	80HH	The assessee is entitled to deduction u/s. 80HH on interest on delayed payment of purchase price.	Biotech Medicals (P) Ltd.	(2009) 121 TTJ 858 121 TTJ 858 119 ITD 143 (Hyd).
DEDUCTION – MANUFACTURE	80HH & 80-I	Activity of laying railway line does not amount to ‘manufacture’ or ‘produce’ for the purpose of allowing deduction under S. 80HHC and 80-I.	Indian Railway Construction Co. Ltd.	(2009) 226 CTR 49 (Del).
DEDUCTION – MANUFACTURE	80IA	Twisting and texturing POY is “manufacture”. Department must examine process. Opinion of expert must be considered.	Emptee Poly-Yarn	(2010) 320 ITR 665 (SC)
DEDUCTION - MANUFACTURE – PRODUCTION – LIMESTONE	80IA, 80IB	Process of converting limestone in to lime powder is a manufacturing activity within the meaning of s. 80IA and 80IB.	Janak Raj Bansal	(2010) 33 DTR 30 (HP)



DEDUCTION – MANUFACTURE OR PRODUCTION	80IB	Process of crushing of stone into stone concrete i.e., grit, in stone crusher is a manufacturing activity within the meaning of s. 80-IB.	D.J. Stone Crusher	(2010) 33 DTR 267 (HP)
DEDUCTION - NEW INDUSTRIAL UNDERTAKINGS - AUDIT REPORT	80IA	Failure to furnish the audit report along with return disqualified the assessee for deduction u/s. 80IA. Deduction cannot be claimed on the ground that report cannot be claimed on the ground that report was filed during the course of assessment.	Jyoti Jain	(20 09) 17 DTR 286 (Raj).
DEDUCTION – NOT AVAILABLE TO CONTRACTORS	80IA(4)	The difference between a “developer” and “Contractor” is that the former designs and conceives new projects while the later executes the same Deduction u/s. 80IA(4) is not available to contractors.	B.T. Patil & Sons	(2009) 32 DTR 1 (2010) 1 ITR 703 (Trib) (Mum)(LB)(Trib.),
DEDUCTION – OLD UNIT MERGING WITH A LARGER NEW UNIT – ELIGIBLE FOR DEDUCTION	80IA	The true test to claim deduction u/s. 80-IA is not whether new industrial undertaking connotes expansion of existing business of assessee but whether it is all the same a new and identifiable undertaking, separate and distinct from existing business. The reconstruction of business or an industrial undertaking must necessarily involve concept that original business or undertaking does not cease functioning and its identity is not lost or abandoned. The s. 80-IA approves a situation in which an old existing smaller industrial undertaking is absorbed by a new and much bigger industrial undertaking.	Mahaan Foods Ltd.	(2009) 177 Taxman 274 6 DTR 48 (Delhi).
DEDUCTION – PROFESSIONAL INCOME – FOREIGN SOURCES	80RR	Income earned by the assessee by exercise of his profession as a chartered accountant which has nothing to do with the exercise of his profession as an author is not entitled to deduction u/s. 80RR.	Dilip K. Sheth	(2010) 33 DTR 561 (Mum) (Trib)
DEDUCTION - PROFESSIONAL INCOME FROM FOREIGN SOURCE	80RR	Any creative work done in any field has to be considered as an artistic work and the person doing the same has to be considered as an artist, work done by the assessee, a commercial artist includes drawing of figures, designing the layout of the art work and putting the same in a graphic form which involves creativity and therefore assessee can be said to be an artist and the remuneration received by her under the agreement for rendering advertising services to a company is eligible for deduction u/s. 80RR.	Preeti Vyas	(2009) 25 DTR 371 123 TTJ 807 (Mum) (Trib).
DEDUCTION – PROFITS AND GAINS FROM INDUSTRIAL UNDERTAKINGS - DUTY DRAWBACK RECEIPTS / DUTY ENTITLEMENT	80I, 80IA, 80IB	Duty drawback receipts / Duty Entitlement pass Book benefits are on account of statutory provisions in Customs Act / Scheme(s) framed by Government, therefore profits so derived do not form part of net profits of eligible industrial undertaking for purposes of ss. 80IB, 80I and 80IA.	Liberty India	(2009) 317 ITR 218 183 Taxman 349 28 DTR 73 (SC).



DEDUCTION – PROFITS AND GAINS FROM INFRASTRUCTURE UNDERTAKINGS – INSURANCE CLAIM	80IA	Amount received by assessee company from insurance company on account of loss of goods destroyed by fire should be taken into account in determining profits and gains of an industrial undertaking of types specified u/s. 80IA.	Sportking India Ltd.	(2009) 183 Taxman 312 27 DTR 187 (Del).
DEDUCTION – PROFITS AND GAINS FROM PUBLICATION OF BOOKS	80Q	The word “book” is a word of widest amplitude which would not only include literary work or other work authored by some one, but may also include mere collection of sheets within its ambit. It can be said that “yellow pages“ which is in form of a directory listing address and telephone numbers of various persons under various classifications, such as lawyers, doctors, etc., can be treated as “books”. Income generated from advertisement given a Yellow Pages Directory could not be ignored and would have to be taken into consideration while computing income derived from business of publication of books.	Tata Infomedia Ltd.	(2009) 116 ITD 426 (Mum).
DEDUCTION – PROFITS OF COMPANY OWNING INDUSTRIAL UNDERTAKING	80IA	The assessee company is not entitled for deduction u/s. 80IA on the profits because the trading activities carried on by the assessee are of the assessee company and not of the industrial undertaking.	Emerson Network Power India (P) Ltd.	(2009) 122 TTJ 67 19 DTR 441 (Mumbai) (Trib.)
DEDUCTION – PROVISION FOR NPA	36(1) (vii)	The “Provision for NPA” made in terms of the RBI Directions does not constitute expense for purposes of s. 36(1)(vii). The said Provision is for presentation purposes and in that sense it is notional. Hence deduction not allowable.	Southern Technologies Ltd.	www.itatonline.org (2010) 228 CTR 440 (SC).
DEDUCTION - PUBLIC PROVIDENT FUND – LIMIT OF ONE LAKH	80C	Where, amount deposited in PPF Account exceeded Rs. 70,000/- prescribed under PPF Scheme, it was held that in view of fact that Act was amended by Finance Act, 2005, permitting an individual to deposit maximum of rupees one lakh in any specified scheme, concerned authorities were to be directed to amend paragraph 3 of PPF Scheme, 1968 in terms of s. 80C and increase maximum limit of subscription to PPF as per Finance Act, 2005.	M.S. Padmarajaiah	(2009) 183 Taxman 209 (Kar).
DEDUCTION – RECOGNITION OF INSTITUTION, ETC. – REFUSAL TO RENEW REGISTRATION	80G, 80G(5)	Activity of assessee of dispensing homoeopathic medicines for a token consideration cannot at all be termed as the assessee’s income being profits and gains of business within the meaning of the proviso to s. 80G(5)(i). Rather, it amounts to an object by way of ‘medical relief’ as defined in s. 2(15). Therefore, the said proviso does not get attracted and assessee was not therefore required to maintain separate books of account in respect thereof. Further, if any payment has been made to any institution which is not registered u/s. 12AA, this shall be taken care of in the assessment of the assessee and it does not have any bearing on the renewal of the approval sought u/s. 80G(5)(vi). It	Agrawal Metal Works Charitable Trust	(2009) 28 DTR 54 (Del)(Trib).



		was held that CIT was therefore not justified in refusing renewal of registration to the assessee especially when renewal had been granted in the past for several years.		
DEDUCTION – RECTIFICATION CHARGES – INCOME DIVIDEND	80HH	Rectification charges received by the assessee from its customers / purchasers is covered by the expression ‘income derived from industrial undertaking’ for the purpose of deduction u/s. 80HH of the Act.	Fal Industries Ltd.	(2009) 27 DTR 157 (Mad).
DEDUCTION – REFUND OF EXCISE DUTY	80IB	The assessee’s undertaking was entitled for exemption from excise duty and hence, assessee received excise duty refund. Held that excise duty refund is includible in the profits entitled for deduction u/s. 80-IB	Dharam Pal Prem Chand Ltd.	(2009) 180 Taxman 557 (Del).
DEDUCTION – RENTAL INCOME CO-OP. BANK	80P	Rental income earned by a co-operative bank from house property cannot be income attributable nor derived from the business of banking as such the same does not qualify for deduction u/s. 80P(2)(a)(i) of the Act. Similarly, interest earned on investment of employee’s provident fund being interest not earned from the money in stock-in-trade or circulating capital also cannot be an income attributable nor derived from the business of banking as such the same does not qualify for deduction u/s. 80P(2)(a)(i) of the Act.	Bihar Rajya Sahkari Bhoomi Vikas Co-operative Bank Ltd.	(2009) 26 DTR 296 (Pat).
DEDUCTION – S. 80IB PRODUCTION OF MINERAL OIL	80-IB(9)	Assessee producing natural gas is producing mineral oil eligible for deduction u/s. 80-IB(9)	Niko Resources Ltd.	(2009) 123 TTJ 310 (Ahd.)
DEDUCTION – SERVICE RENDERED OUTSIDE INDIA	80RRA	While calculating deduction u/s. 80RRA, only expenditure directly connected with earning of foreign exchange is to be deducted to arrive at income from foreign exchange earnings. Action of AO reducing portion of indirect expenses in addition to direct expenses deleted.	Nishit M. Desai	(2009)177 Taxman 61 (Mumbai)
DEDUCTION – SETOFF OF LOSSES	10A	Deduction has to be made at the stage of computing the income under head “Profits & gains” and not at the stage of computing the gross total income. The deduction u/s. 10A attaches to the undertaking and not to the assessee. The losses of a non-eligible unit cannot be set off against the profits of an eligible unit and are eligible to be set-off against other income or to be carried forward.	Scientific Atlanta	www.itatonline.org
DEDUCTION – TRANSPORT & FORWARDING EXPENSES	80HH	The amount of transport and forwarding expenses recovered by the assessee from its dealers is said to be made in the process of manufacturing activity undertaken by the assessee and therefore eligible for deduction u/s. 80HH of the Act.	Fal Industries Ltd.	(2009) 27 DTR 157 (Mad).
DEDUCTION AT SOURCE - INTEREST ON DELAYED	194A, 194IA	Interest on delayed payment of enhanced compensation in respect of acquisition of immovable property is revenue receipt exigible to	Karnail Singh	(2009) 184 Taxman 257 (P&H).



PAYMENT		<p>tax u/s. 4, and therefore, is liable to deduction of tax at source u/s. 194A.</p> <p>Interest accrued on delayed payment of amount of enhanced compensation in respect of acquisition of agricultural land would not partake character of compensation for "agricultural land" which is excluded from operation of s. 194LA.</p>		
DEDUCTION AT SOURCE	195, 201, 2(47), 5(2), 9(1)	<p>Assessee a non-resident company, acquiring shares of another non-resident company, HTIL (which held 67 percent shares in Indian Company HEL). The effect of which is transfer to assessee of a capital asset in India in the form of right to enter in to telecom business in India with controlling interest in a company situate in India. There was prima facie, a transfer of capital asset by HTIL to assessee giving rise to capital gains in the hands of HTIL, hence, show cause notice issued to the assessee seeking to treat the assessee as in default for failure to deduct tax at source while making payment to HTIL could not be said to be without jurisdiction so as to be quashed at the threshold by issue of a writ.</p>	Vodafone International Holdings B.V.	(2009) 311 ITR 46 16 DTR 185 (Bom).
DEDUCTION AT SOURCE - TDS - SALARY - EXPATRIATE EMPLOYEE OF FOREIGN COMPANY	192(1), 9(ii)	<p>The assessee was a joint venture between a foreign company and an Indian company. Four employees were deputed by the foreign company to work for the assessee. Salary was paid by the foreign company. Additional salary was also paid to the employees by the assessee, on which the assessee deducted tax at source u/s. 192(1).</p> <p>The Supreme Court held that the provisions of s. 192(1) would be applicable to the foreign salary received by the employees and that the assessee could be treated as an assessee in default for non deduction of tax at source on the foreign salary.</p> <p>The deductions under provisions of chapter XVII are tentative deduction of income tax subject to regular assessments.</p>	Eli Lilly and Co. (India) P. Ltd.	(2009) 312 ITR 225 21 DTR 74 312 ITR 225 (SC).
DEDUCTION AT SOURCE - TDS - TECHNICAL SERVICES	194J	<p>Services rendered by MTNL and other telecommunication companies qua interconnection / port access do not involve any human interface and therefore, the same cannot be regarded as "technical services" as contemplated u/s. 194J and payments made by the assessee to them for the said services are not liable to TDS u/s. 194J.</p>	Bharati Cellular Ltd.	(2008) 15 DTR 73 (2009) 210 Taxation 420 175 Taxam 573 220 CTR 258 (Del).
DEDUCTION AT SOURCE - COMMISSION	194H	<p>Air tickets sold by assessee, an airline company to its travel agent at a concessional rates was held to be a sale transaction on principal to principal basis, does not amount to payment of commission to the agent as such the assessee is not liable to deduct tax at source (TDS) under the provisions of s. 194H of the Act.</p>	Singapore Airlines Ltd. & Ors.	(2009) 22 DTR 129 (Del).
DEDUCTION AT SOURCE - DEEMED	2(22)(e), 194, 201	<p>Payment or advances to non-shareholder does not</p>	ANZ Reality (P) Ltd.	(2009) 120 TTJ 142 (JP).



DIVIDEND	& 201(1A)	require TDS u/s. 194 and assessee cannot be held to be in default u/s. 201 so as to attract interest u/s. 201(1A).		
DEDUCTION AT SOURCE – FEES FOR PROFESSION OR TECHNICAL SERVICES	194J	Payments for bandwidth and network services cannot be said to be Technical services liable to TDS u/s. 194J.	Pacific Internet (India) Pvt. Ltd.	ITA Nos. 1607 to 1609/Mum/2006, Bench – D, A.Y. 2003-04 to A.Y. 2005-06 BCAJ p. 795, Vol. 40-B, Part 6, March 2009.
DEDUCTION AT SOURCE - FEES FOR TECHNICAL SERVICES	194 J, 201, 201(1A)	Fees for technical services would not include purchase of material by the assessee for the purpose of imparting computer education at their centre, hence, provisions of s. 194J and for that purpose s. 201(1) and 201(1A) are not attracted. Taxes having been duly paid by the deductee same can not be recovered from the assessee for failure to deduct tax at source.	Frontline Software Services (P) Ltd.	(2009) 24 DTR 232. 124 TTJ 369 (Ind) (Trib).
DEDUCTION AT SOURCE - FILM FINANCING	194C	Provisions of s. 194C would not apply to the film financing arrangements.	Mukta Arts	(2009) 31 SOT 244 (Mum).
DEDUCTION AT SOURCE – INTEREST	194A	Assessee a department of State Government, is liable to deduct TDS on interest paid, alongwith compensation to victims as per the order of courts / motor accident claims Tribunal.	G.M. Punjab Roadways	(2009) 178 Taxman 112 (Chandigarh)(SMC).
DEDUCTION AT SOURCE – INTEREST	201(1A)	A person liable to deduct tax at source (Deductor) cannot be asked to pay tax where the deductee has already paid tax on the income received by him. Further, interest u/s. 201(1A) of the Act could be charged to the deductor only upto the date on which the return of income declaring such income is filed by the deductee. Since deductee is a Government undertaking, the taxes may be presumed to have been paid last by due date of filing of the return of income and therefore the liability of the assessee to pay interest on the amount which was to be deducted as TDS ends with in due date of filing of the return by the deductee.	Trans Bharat Aviation (P) Ltd.	(2009) 225 CTR 415 27 DTR 151 (Del).
DEDUCTION AT SOURCE - LEAVE TRAVEL CONCESSION	10(5), 192	An employer is under no statutory obligation to collect evidence to show that its employee has actually utilised amount paid towards leave travel concession /conveyance allowance for purpose of TDS u/s. 192.	ITI Ltd.	(2009) 183 Taxman 219 (SC).
DEDUCTION AT SOURCE – SALARY	192	Assessee liable to deduct tax at source (TDS) from the salaries paid to its employees, shall not be treated as assessee in default, to the extent of the amount of gratuity which is exempt u/s. 10(10) of the Act, even if gratuity is paid under the provisions of the Payment of Gratuity Act, 1972 or otherwise.	North West Karnataka Road Transport Corporation	(2009) 22 DTR 237 (Karn).
DEDUCTION AT	194H,	As per various terms of agreement between	IDEA Cellular Ltd.	(2009) 121 TTJ 352 (Del).



SOURCE - TDS - DISCOUNT TO MARKET ASSOCIATES – SIM CARDS – RECHARGE COUPONS - PAYMENT TO INTERCONNECT CHARGES	194J	assessee and PMA, legal relationship between them being seller and purchaser and not of principal and agent, provisions of s. 194H were not attracted and no tax u/s. 194H is required to be deducted at source on discount given by assessee to PMA on SIM cards / recharge coupons. Payment of interconnect charges to BSNL, MTNL, etc. cannot be treated as payment for technical services as provided u/s. 194J.		
DEDUCTION AT SOURCE – UPFRONT FEES - LIABILITY TO DEDUCT TAX VIS-À-VIS YEAR OF ASSESSMENT OF YEAR	194I	A person who is responsible for paying to a resident any income by way of rent is required to deduct tax at source u/s. 194I at the time of credit of such income to the account of the payee even if it is not the income of the payee previous year in which it is paid; upfront fee paid by assessee to the lessor which is adjustable against 50% of the annual license fee payable to the lessor was rent and therefore assessee was required to deduct tax at source u/s. 194I at the time of the credit of such amount.	Bharat Hotels Ltd.	(2009) 28 DTR 337 (Bang) (Trib).
DEDUCTION AT SOURCE – WORKS CONTRACT	194 & 201(1)	Payments made by the assessee to the employees employed by it on daily wage basis cannot be said to be a contractual payment, as such the assessee in such cases was not required to deduct tax from such payments u/s. 194C of the Act. Where the assessee had produced confirmation from the parties to whom payments were made, confirming the fact that they have included the amount received from the assessee as their income and paid taxes thereon, the assessee cannot be treated as assessee in default under the provisions of s. 201(1) of the Act for non deduction of tax at source.	Dewan Chand	(2009) 17 DTR 337 (Del).
DEDUCTION AT SOURCE – WORKS CONTRACT OR MERE SALE OF GOODS	194C	Agreements entered with third parties for manufacturing goods as per specifications of the manufacturers and all other relevant decisions being taken by the manufacturers, in such circumstances the said agreements were construed as contract for sale of goods and not as works contract. The provisions of s. 194C were thus not applicable.	Glenmark Pharmaceuticals Ltd.	(2009) 30 SOT 19 (Mum).
DEDUCTION AT SOURCE PERQUISITE- TRANSPORT FACILITY FROM RESIDENCE TO OFFICE – PERQUISITE	17(2)(iii), 192	Expenditure incurred by assessee company on transport facility given to employees from their residence to office and vice versa could not be treated as perquisite in view of Explanation to s. 17(2)(iii) and therefore, such expenditure would not attract provision of tax deducted at source u/s. 192.	Transworks Information Services Ltd.	(2009) 29 SOT 543 (Mum).
DEDUCTION – BUSINESS EXPENDITURE- EXEMPTED INCOME	14A.	It could not be assumed that assessee did not incur any expenditure in earning dividend and therefore disallowance u/s. 14A restricted to 1 percent of tax free dividend received by the assessee.	Eih Associated Hotels Ltd.	(2009) 126 TTJ 246 (Kol).



DEDUCTION - COMPUTATION – GROSS TOTAL INCOME - ADJUSTMENT OF BROUGHT FORWARD LOSS, DEPRECIATION ETC.	80I	Gross Total income of the assessee has first to be computed in accordance with the Act and thus profit of assessee new unit had first to be adjusted against other unit's losses and if there was no positive income. Deduction u/s. 80I could not be allowed.	Shree Synthetics Ltd.	(2009) 30 DTR (MP) (Indore)
DEDUCTION – COMPUTATION - ADJUSTMENT OF BROUGHT FORWARD LOSSES	80IB	In view of the specific provision of sub-s. (13) of s. 80IB r.w.s. 80IA(5), profit from eligible business for the purpose of quantification of deduction u/s. 80IB has to be computed after deduction of notional brought forward losses of the eligible business even though they have been allowed to be set off against other income in the earlier year.	Sicgil India (P) Ltd.	(2009) 123 TTJ 462 119 ITD 184 (Chennai) (TM).
DEDUCTION – HOUSING PROJECT	80IB	Housing project does not mean that there should be group of buildings and only then same can called housing project. Additional housing project on existing housing project can qualify for deduction u/s. 80IB(10) provided correct profit can be ascertained .	Vandana Properties	(2009) 31 SOT 392 (Mum).
DEDUCTION- INDUSTRIAL UNDERTAKINGS – PROCESSING	80-IB	Extraction of juice and oil from fruits or further converting homogenized juice in to fruit powder and adding substances meant for preservation would be “processing”.	Delna Rustum Boyce (Mrs.)	(2009) 185 Taxman 180 (AAR-New Delhi)
DEDUCTION – INFRASTRUCTURAL FACILITY- DEVEVELOPER	80 IA	The assessee need not be engaged in the activity of ‘operating and maintaining the facility’ for availing deduction. As the benefit is given to the developer it pre-supposes income to the developer which would accrue only on the receipt of the money by the developer on transfer of infrastructural facility. It was further held that an assessee was engaged in developing infrastructural facility is also eligible for the benefits of s. 80 IA.	Bharat Udyog Ltd.	(2009) 118 ITD 336 24 SOT 412 123 TTJ 689 (Mum).
DEDUCTION- MANUFACTURE- MILLING OF WHEAT IN TO RAWA	80IB	Milling of wheat in to rawa, bran atta and maida can be considered as manufacture or production of distinct article, things for the purpose of deduction u/s. 80IB.	Sri Sai Roller Flour Mills (P) Ltd.	(2010) 35 SOT 345 (Hyd)
DEDUCTION OF TAX AT SOURCE-AD- INTERIM – STAY RECOVERY GRANTED	195.	In a SLP filed against the judgement of the Karnataka High Court in CIT vs. Samsung Electronics Co. Ltd. (2009)320 ITR 209, 185 Taxman 313 (Kar). The Court held that liability can not be avoided on ground of non taxability of recipient, the Supreme Court, by an ad-interim order dated 18.12.2009 directed issue of notice to the Respondents and also directed “Stay of recovery till further orders”.	G.E. India Technology	www.itatonline.org
DEDUCTION OF TAX AT SOURCE – ADVANCE TAX – INTEREST	201(1A), 234A, 234B, 234C	Where the deductor had already discharged tax liability payable u/s. 201(1A) of the act and no further interest could be claimed by the revenue	Emilio Ruiz Berdejo	(2010) 320 ITR 190 (Bom) / 228 CTR 145



		from the deductee-employee either u/s. 234A or s. 234B or s. 234C.		
DEDUCTION OF TAX AT SOURCE – APPEAL – PAYMENT TO NRI	195 201 246, 248	Assessee is liable to deduct tax at source in respect of payment made to a foreign company for purchase of shrink wrapped /ready made software under section 195 (I) . Failure to decut is liable to interest under section 201. Where the appeal against order u/s. 195(1) and 201 was made, Appellate authorities cannot decide whether payment was assessable or not.	Samsung Electronics Co. Ltd.	(2010) 320 ITR 209 185 Taxman 313(Kar)
DEDUCTION OF TAX AT SOURCE – ASSESSEE IN DEFAULT	201	Payer not an assessee in default u/s. 201 if payee has paid tax on income but payer liable to interest u/s. 201(1A)	Intel Tech India Pvt. Ltd.	BCAJ p. 48, Vol. 41A, Part 6, September 2009 (2009) 32 SOT 227 (Bang)(AT)
DEDUCTION OF TAX AT SOURCE - ASSESSEE IN DEFAULT- TIME LIMIT FOR PASSING ORDER.	195, 201(1)	Person responsible for paying not to be treated as in default if recipient pays tax or is not chargeable to tax under Act, but may be liable for interest. Where no time limit is prescribed then in that case order must be passed with in a reasonable time.	Mahindra and Mahindra Ltd.	(2009) 313 ITR 263 (AT) (Mum)(SB).
DEDUCTION OF TAX AT SOURCE – COMMISSION	195	No tax is required to be deducted from commission paid to agent outside India if no services performed in India or no fixed place of business in India	Spahi Projects Pvt. Ltd.	AAR No. 802 of 2009, dt. 29-7-2009 - BCAJ p. 50, Vol. 41A, Part 6, September, 2009
DEDUCTION OF TAX AT SOURCE – CONTRACTOR - SUB-CONTRACTORS	194C	Assessee placed orders for manufacture of medicines according to its own specifications and all other relevant decisions for manufacturing had been left to the wisdom of manufacturers and goods were manufactured by manufacturers in their own establishment by purchasing raw material of their own and excise duty was also paid by them directly and property in goods passed over to assessee only when such goods manufactured and delivered to it, in such circumstances agreements entered in to by assessee with the manufacturer could not be termed as works contract and were only contract for sale of goods, hence, provisions of s. 194C were not applicable on payments made to manufacturers.	Glenmark Pharmaceuticals Ltd.	(2009) 30 SOT 19 (Mum).
DEDUCTION OF TAX AT SOURCE – CONTRACTOR / SUB – CONTRACTORS	194C	As the payments were made directly to drivers or truck owners by assessee and through suppliers and further they were charging commission from truckwals and not from the assessee. Further it was found that no payment exceeding Rs. 20000/- was paid to truck owners or drivers, provisions of s. 194C can not be made applicable.	Bhoruka Roadlines Ltd.	(2009) 117 ITD 311 (Mum).
DEDUCTION OF TAX AT SOURCE - FEES FOR PROFESSIONAL OR TECHNICAL SERVICES - TRANSACTION FEE	9(I)(vii), 40(a)(ia), 194J	Transaction fee paid to stock exchange on the basis of volume of transaction is payment for use facilities provided by stock exchange and not for any services, either technical or managerial, hence, provisions of s. 194J are not attracted and no disallowance can be made by invoking s. 40(a)(ia).	Kotak Securities Ltd.	(2009) 24 DTR 214 (Mum)(Trib).



DEDUCTION OF TAX AT SOURCE - HIRING OF TRUCK	194C, 40(a)(ia)	Hiring of trucks belong to truck owners without man power i.e. drivers and conductors , can not be said to be carrying on any work as used in s. 194C, and as such no tax was deductible from payments made to truck owners.	Satish Aggarwal & Co.	(2010) 122 ITD 35 (Asr).
DEDUCTION OF TAX AT SOURCE - INCOME DEEMED OR ACCRUED IN INDIA – FEES FOR TECHNICAL SERVICES	9, 195 & 201	Amount paid by assessee to non-resident company for rendering technical services for commissioning of power plant in India did not attract tax liability as the technical services were in the nature of theoretical formulation which could be rendered wholly offshore and outside India; however, ‘start-up services’ and ‘overall responsibility’ involve executory part of the contract which took place in India and therefore, assessee was required to effect TDS out of remuneration paid towards these services.	Jindal Thermal Power Company Ltd.	(2009) 225 CTR 220 26 DTR 172 (Kar).
DEDUCTION OF TAX AT SOURCE – JURISDICTION – ASSESSEE IN DEFAULT – CONSTITUTION OF INDIA – ARTICLE –	2(47), 9(1)(1), 195, 201	The Supreme Court held that the question of jurisdictional issue may be determined by the authorities concerned as a preliminary issue. The Supreme Court further held that the Petitioner would be entitled to question the decision of the authority on the preliminary issue before the High Court.	Vodafone International Holdings B.V.	(2009) 221 CTR 617 (SC).
DEDUCTION OF TAX AT SOURCE – LIMITATION	143, 147, 149, 153, 195, 201(1)	As there is no time limit is prescribed order must be passed within reasonable time which is an order akin to assessment i.e. the time limit on par with time available for assessment or reassessment of recipient. Time of one year is available from initiation of proceedings for passing order.	Mahindra and Mahindra Ltd.	(2009) 313 ITR 263 (AT)(Mum)(SB).
DEDUCTION OF TAX AT SOURCE – NOT REQUIRED IF THE AGREEMENTS OF ASSESSEE WITH ENTREPRENEURS COULD NOT BE TERMED AS WORKS CONTRACT WITHIN THE SCOPE OF 194C OF THE ACT	194C ,201	In the present case, the DVDs etc. were manufactured by entrepreneurs in their own establishment, in accordance with specifications of assessee, (ii) the raw material cost and other ancillary costs were also incurred by them, (iii) excise duty was paid by them and it was only when goods were sold to assessee that property in goods passed over to it, such agreements of the assessee with entrepreneurs could not be termed as works contract within the scope of s. 194C and hence no TDS was required.	Shemaroo Video (P) Ltd.	(2009) 31 SOT 65 (Mum).
DEDUCTION OF TAX AT SOURCE – PAYMENT TO HOTELS	194C	Facilities / amenities made available by a Hotel to its customers do not constitute “work” within the meaning of s. 194C and consequently, Circular No 681 dt. 8 th March, 1994 to the extent it holds that services made available by a hotel to its customers are covered u/s. 194C must be held to be bad in law and is liable to be quashed.	The East India Hotels Ltd. & Anr.	(2009) 223 CTR 133 179 Taxman 17 21 DTR 244 320 DTR 523 (Bom).
DEDUCTION OF TAX AT SOURCE- PAYMENT TO NON RESIDENT- TECHNICAL	9, 9(1)(vi), 195,	Assessee company had purchased plant in the form of technical documents including designs, drawings etc, and the title in the documents stood transferred to assessee on payment to foreign company and therefore the payment could not be termed as	Maggronic Devices (P) Ltd.	(2009) 31 DTR 65 (HP).



DOCUMENTS		royalty so as to attract TDS.		
DEDUCTION OF TAX AT SOURCE - SALARY – PERQUISITE	2(24)(iii), (IIIa), (iii b), 17(I)(iv), 2(ii)(C), Expln. 201	Employer providing composite free Bus pick up and drop facility to employees, not taxable as perquisites. Value of facilities enjoyed by all employees as it is impossible of computation, computation machinery fails hence the employer cannot be treated as assessee in default for failure to deduct tax at source. Editorial – see. WNS Global Services (P) Ltd. (2009) 33 SOT 445 (Mum)	Transwork Information Services Ltd.	(2010) 1 ITR 58 (Mumbai) (Trib)
DEDUCTION OF TAX AT SOURCE- CONTRACTOR-SUB – CONTRACTOR-CLEARING AND FORWARDING AGENTS	194C	Assessee was a partnership firm carrying on business of clearing and forwarding agents and booking cargo for transportation abroad for various airlines operating in India.. It collected freight charges from exporters who intended to send goods through a particular airline and paid amount to airline or its general agents and for services rendered assessee charged commission from airlines .High court held that since contract was actually between exporter and airline and assessee was only an intermediary, it was not a “person responsible” for deduction of tax at source in terms of s. 194C.	Cargo Linkers	(2009) 179 Taxman 151 (Delhi).
DEDUCTION OF TAX AT SOURCE- FRANCHISEE	194I	Payments made by the assessee to its franchisee would not bear the character of rent in the absence of any lessor–lessee relationship.	NIIT Ltd.	(2009) 184 Taxman 472 30 DTR 49 (Delhi).
DEDUCTION OF TAX AT SOURCE SALARY	192	The Supreme Court held that an employer is under no obligation to collect and examine the supporting evidence to a declaration submitted by an employee to the effect that he has actually utilised the amounts for the specified purposes in deciding the liability to TDS u/s. 192.	ITI Ltd.	(2009) 221 CTR 619 (SC).
DEDUCTION OF TAX AT SOURCE- SUB- CONTRACTOR	194C(2), 40(a)(ia)	Assessee taking vehicles on hire for purpose of executing contract, not a case of sub-contract, tax need not be deducted at source.	Mythri Transport Corporation	(2010) 1 ITR 290 (Visakahpatnam) (Trib)
DEDUCTION OF TAX AT SOURCE-FESS FOR PROFESSIONAL OR TECHNICAL SERVICES	194J	Third party Administrator (TPA), who is responsible for making payment to hospitals for rendering medical services to policy holders under various health insurance policies issued by several insurers, is obliged to deduct tax at source u/s. 194J from payments made to hospitals.	Medi. Assist India TPA (P) Ltd.	(2009) 184 Taxman 359 (Kar).
DEDUCTION OF TAX AT SOURCE- PAYMENT BY SOCIETY TO ITS MEMBERS	194C.	Payments made by assessee society to the truck owners who are its members after receiving the payments from the companies for transporting their goods are not subject to TDS u/s. 194C(2), as there is no sub contracts with the said companies on behalf of its members.	Ambuja Darla Kashlog Mangu Transport Co–op. Society	(2009) 31 DTR 49 (HP).
DEDUCTION- MANUFACTURE –	80IB	Activity of making transformer cone from cold rolled Grain oriented / cold; rolled non-grain oriented coils invoking series of processes amounts to manufacture for the purpose of allowability of	Alfa Lamination	(2009) 225 CTR 212 22 DTR 161 (Guj).



		claim u/s. 80IB.		
DEDUCTIONS – DEVELOPER - INFRASTRUCTURE UNDERTAKINGS	80IA(4)	Assessee which is engaged in ‘developing’ infrastructural facility i.e. road, and not engaged in ‘operating and maintaining’ said facility, is entitled to benefits of deduction u/s. 80IA(4) of the Act.	Bharat Udyog Ltd.	(2009) 118 ITD 336 23 DTR 433 (Mum) (Trib).
DEDUCTIONS- HOUSING PROJECT - BUILT UP AREA	80IB	Definition of “built-up area” in clause (a) of s. 80IB(14) introduced by Finance Act, 2004, has only prospective effect from 1-4-2005, therefore prior to 1-04-2005 balcony would not form part of built up area, irrespective of area of such balcony.	Sheth Developers (P) Ltd.	(2009) 33 SOT 277 (Mum).
DEEMED DIVIDEND	2(22)(e)	Deemed dividend can be assessed only in the hand of a shareholder of lender company and not in the hands of a person other than shareholder. The expression ‘shareholder’ referred to in s. 2(22)(e) refers to both – a registered shareholder and a beneficial shareholder. Thus, if a person is registered shareholder but not beneficial shareholder or vis-a-versa then provisions of s. 2(22)(e) would not apply.	Bhaumik Colour (P) Ltd.	(2009) 118 ITD 1 18 DTR / 120 TTJ 865 118 ITD 1 313 ITR 146 (Mum)(SB).
DEEMED DIVIDEND – COMMERCIAL PROFITS – DEPRECIATION – TO BE REDUCED FROM COMMERCIAL PROFITS	2(22)(e)	It has been held that for the purpose of s. 2(22)(e) of the Income-tax Act (Act), accumulated profits would mean commercial profits. In determining this commercial profit, depreciation, which has been recognized as a charge towards profit both under the Companies Act, 1956 as well as the Act has to be reduced from the commercial profit for the purpose of S. 2(22)(e) of the Act.	Yasin Hotels (P) Ltd.	(2009) 30 SOT 47 (Chennai)(URO).
DEEMED DIVIDEND – DEPOSIT	2(22)(e)	Amount received from a company as security by assessee firm. Assessee firm is not registered shareholder hence amount received as security not assessable as deemed dividend in hands of assessee firm. Editorial Note:- See CIT vs. Bhaumik Colour P. Ltd. (2009) 313 ITR 146 (AT) (Mum.) (SB) / (2009) 118 ITD 1 (Mum.) (SB)	Hotel Hilltop	(2009) 313 ITR 116 (Raj).
DEEMED DIVIDEND - INTER-CORPORATE DEPOSITS	2(22)(e)	Inter Corporate Deposits (ICDs) are different from loans or advances and would not come within purview of deemed dividend u/s. 2(22)(e).	Bombay Oil Industries Ltd.	(2009) 28 SOT 383 (Mum).
DEEMED DIVIDEND - LOAN PRIOR TO SHAREHOLDING	2(22)(e)	Loan received by assessee before becoming a registered shareholder of the lender company can not be treated as deemed dividend u/s. 2(22)(e).	Sagar Sahil Investment (P) Ltd.	(2009) 120 TTJ 925 (Mum).
DEEMED DIVIDEND – LOAN TO DIRECTOR	2(22)(e)	Assessee procured loan from a company in which he was a Director and was holding 50% equity shares. The said company was in business of lending of money, and on amount given as loan to assessee it charged Interest. Held, that s. 2(22)(e) can not be attracted as it was a business transaction of the company.	Bharat C. Gandhi	(2009) 178 Taxman 83 (Mum).
DEEMED DIVIDEND – TAXABLE ONLY IN THE HANDS OF REGISTERED SHARE	2(22)(e)	In the present case following the Special Bench decision of the Mumbai Tribunal in the case of ACIT vs. Bhaumik Colour (P) Ltd. (2009) 27 SOT 270, the Hon’ble Tribunal upheld the order of the	National Travel Services	(2009) 31 SOT 76 (Delhi).



HOLDER		CIT(A) that u/s. 2(22) (e) of the Act, deemed dividend can be assessed only in the hands of a person who is a registered share holder of the lender company and not in the hands of a person other than a registered shareholder.		
DEEMED DIVIDEND – TRANSACTION IN THE NORMAL COURSE OF BUSINESS	2(22)(e)	Assessee company having received advances from another company in the normal course of business, same can not be treated as deemed dividend u/s. 2(22)(e).	Timeless Fashions (P) Ltd.	(2010) 33 DTR 48 (Del) (Trib)
DEEMED DIVIDEND- LOAN IN ORDINARY COURSE OF BUSINESS	2(22)(e)	The Tribunal accepted assessee contention that both the companies were non-banking companies and the amounts were given in the ordinary course of business hence the receipt of loan as deemed dividend cannot be taxed.	Usha Commercial (P) Ltd.	(2009) 30 SOT 37 (Kol) (URO).
DEEMED DIVIDEND- LOANS FOR BUSINESS ADVANTAGES	2(22)(e)	The amount advanced for business transaction would not fall within the definition of “deemed dividend”.	Creative Dying & Printing (P) Ltd.	(2009) 184 Taxman 483 (Delhi).
DEEMED DIVIDEND – TRADE ADVANCES	2(22)(e)	Word ‘advance’ which appears in the company of the word ‘Loan’ in s. 2(22)(e) could only mean such advances which carries with it an obligation of repayment. Trade advances which is in nature of money transacted to give effect to a commercial transaction does not fall within ambit of provisions of s. 2(22)(e).	Raj Kumar	(2009) 23 DTR 304 181 Taxman 155 (2010) 228 CTR 506 (Del).
DEPRECIATION – ACTUAL COST	32(1)(i), 43(i) Explan. 3	In order to apply Explan. 3 to s. 43(1), AO has to determine the ‘actual cost’ of the assets to the assessee which can only mean arm’s length value or real value or worth of assets transferred, burden to determine the ‘actual cost’, in accordance with the law is on the AO and not on the assessee in question. AO having cited no good ground for not accepting the cost of the assets in question as valued by registered valuer or shown in memorandum of transfer and made no attempt to undertake the exercise of finding out the actual cost of said assets acquired by assessee on takeover business of a firm, no case is made out for applying Explan. to s. 43(1).	Chitra Publicity Company (P) Ltd.	(2009) 32 DTR 227 (Ahd)(TM).
DEPRECIATION – BLOCK OF ASSET – CAPITAL GAINS	2(11), 32(1)(iii), 50	Building owned by the assessee, as also deemed to be owned by assessee as per Explan, 1 to s. 32(1) in respect of which same rate of depreciation is prescribed have to be taken for determining WDV of block of assets, no loss on account of any shortfall between the individual WDV of building of deemed ownership and any amount realized in respect thereof can be allowed as a capital loss u/s. 50.	Anand & Anand	(2009) 29 DTR 489 (Del).
DEPRECIATION – BLOCK OF ASSETS	2(11), 32, 43(6)	Scrap value of the assets which have been written off during the year is to be reduced from the WDV of the block of assets for the purpose of allowing depreciation and not of the individual assets.	Xerox India Ltd.	(2010) 127 TTJ 84 (Del).



DEPRECIATION – CONDITION PRECEDENT USE OF MACHINERY	32	It was held that where machinery is installed but found defective it will amount to use of machinery. Hence assessee was entitled to depreciation.	Chamundeshwari Sugar Ltd.	(2009) 309 ITR 326 (Karn).
DEPRECIATION – DEFECTIVE MACHINERIES	32	Defective machineries found during trial run – Whether depreciation is allowable on machineries which were brought for business purpose and found to be defective after the trial installation. Held, Yes. The defective machineries cannot be said that they were not for business purposes. Hence, the claim is allowable.	Sri Chamundeshwari Sugar Ltd.	(2009) 223 CTR 423 (Kar).
DEPRECIATION - EARTH MOVING MACHINERY	32	Though JCB has been categorized as an excavator and its main function is removing soil or earth, yet at the same time, JCB's another function is to carry or transport removed soil and dump it at another site to discharge function like transshipment and loading into another vehicle and therefore, for the purpose of depreciation, JCB can be treated as a motor lorry and it would be eligible for higher depreciation at 40 percent.	Gaylord Constructions	(2008) 175 Taxman 99 (Magz) (Cochin).
DEPRECIATION – GOOD WILL – REVISION	32, 263.	True test of depreciation is character of an asset and not its description, therefore, even if an asset is described as “goodwill” but it fits in description of s. 32(1)(ii), depreciation is to be granted thereon, hence the revision order is bad in law.	Hindustan Coca Cola Beverages (P) Ltd.	(2009) 34 SOT 171 (Delhi).
DEPRECIATION – GOODWILL – INTANGIBLE	32(1)(11)	Goodwill is not an intangible asset within the meaning of s. 32(1)(11) hence acquisition cost of goodwill is not entitled to depreciation.	R.G. Keswani	(2009) 116 ITD 133 120 TTJ 1081 308 ITR 271 (Mum).
DEPRECIATION – INTANGIBLE ASSET – LICENCE BY STATE GOVERNMENT	32(1)(ii)	Licence granted by State Government for collection of toll on a road which constructed and maintained by the assessee on build, operate and transfer basis in terms of agreement with the State Government for a fixed period of 16 years and 9 months is an intangible asset eligible for depreciation as prescribed u/s. 32(1)(ii)	Asoka Info (P) Ltd.	(2009) 22 DTR 60 129 TTJ 77 (Pune) (Trib).
DEPRECIATION - INTANGIBLE ASSET – LICENSE	32(1)(ii)	Commercial rights of exploration of mineral oils acquired by assessee by entering in to production sharing agreement with the Russian Government fall under the expression ‘any other business or commercial rights of similar nature’ same being akin to “licence” as stipulated in s. 32(1)(ii) and therefore .they are in the nature of intangible assets eligible for depreciation . Editorial – see Bombay High Court CIT v Techno Shares & Stocks Ltd (2009) 184 Taxman 103 (Bom.).	ONGC Videsh Ltd.	2010) 33 DTR 22 (Del)(Trib)
DEPRECIATION – INTANGIBLE ASSET- NON COMPETE RIGHT	3(1)(ii)	Non compete right acquired by the assessee company is eligible for Depreciation under cl (ii) of s. 32(1) as intangible asset being of the same nature as business/commercial right of a patent etc mentioned in that clause.	Medicorp Technologies India Ltd.	(2009) 21 DTR 69 30 SOT 506 (Chennai)



DEPRECIATION – LEASE	32(1)	Lessees having entered in to sub lease even before the date of alleged lease of bottles between the assessee (lessor) and the said Lessee and there being nothing in the lease deed indicating commencement of the lease from a prior date, the so called lease transaction can not be accepted as genuine, more so when the lessee is stated to be absolute owner of the bottles under the sub lease and therefore, depreciation could not be allowed to the assessee on said bottles.	Mcorp Global (P) Ltd.	(2009) 19 DTR 153 178 Taxman 347 (SC).
DEPRECIATION – LEASE OF ASSETS	32	Assets purchased and leased back to same person. Assessee entitled to depreciation.	ICICI Ltd.	(2008) 307 ITR 262 (AT)(Mum).
DEPRECIATION - LEASE OF MACHINERY – USER OF ASSET	32	Lease of machinery before end of accounting year, Lessee installing machinery after end of accounting year is not relevant. The assessee is entitled to depreciation.	Kotak Mahindra Finance Ltd.	(2009) 317 ITR 236 23 DTR 299 (Bom).
DEPRECIATION – LEASING	32	Where the assessee is engaged in the business of leasing out motor trucks and lorries, is entitled to claim depreciation at the rate of 40 per cent on such leased out vehicles.	Agarwal Finance Co. (P) Ltd.	(2009) 28 DTR 102 (Cal).
DEPRECIATION – MANDATORY	32, 80IA	For the purpose of deduction under Chapter VIA, the gross total income has to be computed inter alia by deducting the deductions allowable u/s. 30 to 43D of the Act, including depreciation allowable u/s. 32 of the act, even though the assessee has computed the total income under chapter IV by disclaiming the current depreciation.	Plastiblends India Ltd.	(2009) 185 Taxman 187 318 ITR 352 (Bom) FB. (2009) 178 Taxman 397. 223 CTR 2291.(Bom) www.itatonline.org
DEPRECIATION - MEMBERSHIP CARD OF STOCK EXCHANGE	32	Membership card of stock exchange would be entitled to claim depreciation on the WDV of the membership right of the stock exchange.	Kotak Securities Ltd.	(2009) 24 DTR 214 (Mum)(Trib).
DEPRECIATION - MOTOR LORRY – DUMPER	32	Higher rate of depreciation is also admissible when motor lorry is used by assessee in his own business of transportation of goods on hire.	S.C. Thakur & Bros.	(2009) 180 Taxman 348 18 DTR 271 (Bom).
DEPRECIATION – NON COMPETE	37	Amounts paid by way of non-compete fees claimed as revenue expenditure, was treated as capital expenditure. Assessee’s alternate plea to treat same as an intangible asset u/s 32, and consequent grant of depreciation thereon was upheld.	Real Image Tech (P) Ltd.	177 Taxman 80 120 TTJ 983 (Chennai).
DEPRECIATION - RESTRICTIVE COVENANT	32(1)(iii)	Depreciation on restrictive covenant is not allowable. Editorial – See ITO vs. Mediacorp Technologies India Ltd. (2009) 21 DTR 69 / (2009) 30 SOT 506 (Chennai)(Trib).	Srivatsan Surveyors (P) Ltd.	(2009) 32 SOT 268 (Chennai).
DEPRECIATION – SPARES – READY FOR USE	32	Depreciation is allowable on spares which are not actually used but are kept ready for use. The expression ‘used for the purpose of business’ includes ‘ready for use’. The spares which are specific to a particular machine may become useless once the machine is discarded even if not	Insilco	(2009) 20 DTR 65 179 Taxman 55 (Del).



		actually used but kept ready for use.		
DEPRECIATION - STOCK EXCHANGE MEMBERSHIP CARD	32(1)(ii)(2)	Expression 'licences' in s. 32(1)(iii) has to be construed restrictively so as to apply to license relating to acquisition / user of intellectual property rights and not all licences; further, s. 32(1)(ii) contemplates is the business or commercial rights relating to intellectual properties and not all categories of business or commercial rights; depreciation is not therefore allowable on the Bombay Stock Exchange Membership Card as it does not fall in any of the categories specified in s. 32(1)(ii).	Techno Shares & Stocks Ltd. & Ors.	(2009) 28 DTR 201 225 CTR 337 184 Taxman 103 28 DTR 201 (Bom).
DEPRECIATION – TRIAL RUN	32	Depreciation is allowable even where trial–run production takes place.	Finolex Cables Ltd.	(2009) 29 SOT 595 (Pune).
DEPRECIATION – WORKERS QUARTERS	32(1)(iv)	Workers quarters having been leased out as a part of the plant and income derived as assessed as business income, the assessee was entitled to depreciation @ 40 percent u/s. 32(1)(iv) in respect of workers quarters.	Rieta Biscuit Co. (P) Ltd.	(2009) 31 DTR 89 (P&H).
DEPRECIATION- ACTUAL COST	43(1)	In order to apply expln. 3 to s. 43(I), AO has to determine the actual cost of the assets to the assessee which can only mean arm's length value or real value or worth of assets transferred .Burden is on AO to establish that actual cost is not proper.	Chitra Publicity Company (P) Ltd.	(2010) 127 TTJ 1 (Ahd)(TM).
DEPRECIATION ALLOWABLE EVEN IF ASSET NOT USED AT ALL FOR ENTIRE YEAR	32	The assessee, engaged in shipping business, owned a barge which was included in the block of assets. The barge met with an accident and sank on 6.3.2000 (AY 2000-01). As efforts to retrieve the barge were uneconomical, the barge was sold on as-is-where-is in May 2001 (AY 2002-03). As the barge was non-operational and not used for business at all in AY 2001-02, the AO denied depreciation. On appeal by the assessee, the Tribunal took the view that after the insertion of the concept of "block of assets" by the T.L. (A) Act, 1988 w.e.f. 1.4.1988 individual assets had lost their identity and only the "block of assets" had to be considered. It was held that the test of "user" had to be applied upon the block of assets as a whole and not on individual assets. On appeal by the Revenue, the High Court dismissed the appeal holding that the issue was squarely covered in favour of the assessee by its earlier judgments in Whittle Anderson 79 ITR 613 and G. N. Agrawal 217 ITR 250.	G.R. Shipping	(2009) 309 ITR 125 (Bom).
DEPRECIATION - BLOCK OF ASSETS – INDIVIDUAL USER	32.	As per s. 32(1) the asset is to be owned and "used" for the purpose of business or profession, the expression "used for the purpose of business" when applied to block asset would mean use of block asset and not any specific items in the said block as individual assets have lost their identity after becoming inseparable part of the block asset.	Bharat Aluminium	www.itatonline.org



DEPRECIATION-GOODWILL	32	Goodwill is a bundle of rights which include, inter alia, patents trade marks, licences franchises, etc and they assume importance in commercial world as they represent a particular benefit or advantages or reputation built by a person / company / business house over a period of time and customers associate themselves with such assets hence depreciation would be allowable on same.	Kotak Forex Brokerage Ltd.	(2009) 33 SOT 237 (Mum).
DEPRECIATION WHEN RULE 8D APPLIES	32	The Supreme Court held that in case of manufacturer of tea, by virtue of rule 8D, only 40% of the income is taxed and consequently in deciding liability only proportionate depreciation is required to be taken in to account as that is the depreciation actually allowed.	Doom Dooma India Ltd.	(2009) 310 ITR 392 (SC).
DEPRECIATION-SALE AND LEASE BACK TRANSACTION VIS-À-VIS TAX AVOIDANCE	32(1)(ii)	Assessee having sold the machinery and then acquired the same on lease and lease rental was also paid, it could not be said that transaction was sham or a device, and therefore depreciation was allowable.	Punjab State Electricity Board.	(2009) 30 DTR 153 (P&H).
DEVELOPER VIS-À-VIS CONTRACTOR – IN A DEDUCTION UNDER S. 80-IA	5	Deduction under s. 80-IA is available to a ‘developer’ and not to a ‘contractor’; in the absence of factual details, matter remanded to AO for fresh adjudication.	East Coast Constructions & Industries Ltd.	(2009) 23 DTR 225 (Chennai)(Trib).
DISALLOWANCE	14A	Where the AO had not invoked the provision of s. 14A of the Act to disallow the expenditure incurred by the assessee in relation to the earning of exempt income, the High Court held that tribunal was not justified in remanding the matter back to the file of the AO with a direction to consider the applicability of s. 14A.	Topstar Mercantile (P) Ltd.	(2009) 225 CTR 351/ 28 DTR 215 (Bom)
DISALLOWANCE	40(a)(ia) r.w.s. 194H	The assessee sold the products billing them at gross amount and trade discount was given at the rate of 50% or 30% or 17.20% as the case may be. The net amount was shown as price payable and sales tax was collected on the said amount. Held that trade discount debited by the assessee in its accounts is not covered u/s 194H. Since there was no liability to deduct tax, the disallowance u/s. 40(a)(ia) was deleted.	S.D. Pharmacy Pvt. Ltd.	ITA Nos. 948/Coch/2008, A.Y. 2005-06, dt. 5-5-2009. BCAJ p. 62, Vol. 41-A, Part 4, July 2009.
DISALLOWANCE	40A(3)	Once the payments are covered by Clauses (f) & (I) of Rule 6DD, then it cannot be disallowed u/s. 40A(3).	Hind Industries Ltd.	(2009) 120 TTJ 505 (2008) 26 SOT 196 19 DTR 561 (Del)
DISALLOWANCE – 14A - EVEN UNDER RULE 8D OF S. 14A, DISALLOWANCE CAN BE MADE ONLY IF THERE IS ACTUAL NEXUS BETWEEN TAX-FREE INCOME AND EXPENDITURE	14A	(i) If the investment in the shares is out of the non-interest bearing funds, disallowance u/s 14A is not sustainable; (ii) The contention of the revenue that directly or indirectly some expenditure is always incurred which must be disallowed u/s 14A cannot be accepted; (iii) Disallowance u/s 14A requires a finding of incurring of expenditure. If it is found that for earning exempted income no expenditure has	Hero Cycles	(2009) 17 DTR 281 (P&H).



		<p>been incurred, disallowance u/s 14A cannot stand;</p> <p>(iv) The contention of the revenue even if the assessee has made investments in shares out of its own funds, the said own funds are merged with the borrowed funds in a common kitty and, therefore, disallowance u/s 14A can be made is also not justified.</p> <p>For a round – up of the law on s. 14A and Rule 8D see Temporary reprieve from Daga Capital (2009) 17 DTR 281 (P&H).</p>		
DISALLOWANCE - EXPENSES OF PAYMENTS TO RELATIVES	40A(2)(b)	Discount sales given to sister concern are not covered under the provisions of s. 40A(2)(b) of the Income Tax Act, 1961.	Orgo Chem Guj. Pvt. Ltd.	ITA No. 7872 /Mum/2004 Bench H, Dt. 17-8-2007. (2008) 40–B BCAJ JAN 520 (unreported).
DISALLOWANCE – INTEREST ON BORROWED CAPITAL	14A	Interest on borrowed fund could be disallowed u/s. 14A only when it is used for the purpose of investment in shares which are held as investment or as capital asset by the assessee.	Mukund Global Finance Ltd.	(2009) 309 ITR 294 117 ITD 20 (Mum).
DISALLOWANCE – INTEREST ON BORROWED CAPITAL	36(1)(iii)	Interest paid on borrowed funds were disallowed on the ground that the amounts have been transferred to sister concerns. It was held that as the funds advanced were for purchases / service charges, and thus had the direct nexus with the business, and as also most of the amounts were transferred by journal entries and there was no actual transfer of cash, the proportionate disallowance can not be sustained.	Accelerated Freeze Drying Co. Ltd.	(2009) 31 SOT 442 180 Taxman 68 (Cochin).
DISALLOWANCE – PAYMENT OF HIRE CHARGES OF TRUCKS – NO TDS	40(a)(ia), 194C	In the instant case, assessee hired trucks for a fixed period on payment of hire charges which were utilized in its business of civil construction. There was no agreement for carrying out any work or to transport any goods or passengers from one place to another. Hiring of trucks for the purpose of using them in assessee’s business did not amount to contract for carrying out any work as contemplated in s. 194C. It was held that once the contract was not for carrying out any work, the provisions of s. 194C were not attracted and no disallowance u/s. 40(a)(ia) can be made.	Satish Aggarwal & Co.	(2009) 27 DTR 34 (Asr).
DISALLOWANCE – SHARES – INCOME FROM FIRM	14A	It is not possible to hold the view that share income in the hands of partner of a partnership firm is altogether tax free. It is held that share of profit in the hands of a partner is income which has suffered tax in the hands of the firm and found that the share of profit from the firm is exempt from tax u/s. 10(2A) not in absolute sense but with a view to avoid double taxation. Accordingly, s. 14A is not applicable to the facts of the case.	Hitesh D. Gajaria	ITA No. 993/Mum/2007, Bench – H, AY 2003–04, dt. 14-11-2008 BCAJ p. 519, Vol. 40-B, Part 4, January 2009.
DISALLOWANCE CONTRIBUTION TOWARDS ESI	43B	Payment made to ESI fund before due date for filing return is not hit by the rigour of s. 43B.	Indwel Linings (P) Ltd.	(2009) 122 TTJ 137 21 DTR 21 (Chennai)
DISALLOWANCE OF	14A	The fact that the profits are charged to tax in the	Dharmasingh Popat	(ITAT Mumbai) Bench



EXPENSES – PARTNERS SHARE OF PROFIT		hands of the firm does not mean that the share of such profits is non exempt in the hands of the partner. The profits being exempt in the hands of the partner, S. 14A does apply in computing his total income. A firm and the partner are consequently separate entities under the act.		'H' ITA No. 7534/M/04, A.Y. 2001-02. www.itatonline.org
DISALLOWANCES CASH EXPENDITURE	40A(3)	Provisions of s. 40A(3) apply for each payment and not aggregate of the various payments made to same party during one day.	Shanti Ram Mehata	(2009) 119 ITD 62 (Kol)(TM).
DIVIDEND - DEEMED DIVIDEND - LOAN IN THE COURSE OF BUSINESS	2(22)(e)	Money lending being one of the six main objects of the lender company and the said business having been carried on by it in preference to other business, the loan given to the assessee was in the course of money lending business and therefore, assessee's case is not covered by the provisions of s. 2(22)(e), income criteria from a particular source of income was not relevant.	Krishnoics Ltd.	(2009) 120 TTJ 650 (Ahd).
DOUBLE TAXATION AVOIDANCE – TREATY WILL PREVAIL OVER PROVISIONS OF INCOME TAX ACT	90	It was held, income from receipt of royalties as set out in s. 9(1)(vi) are taxable in India whether or not the non-resident has a place of residence, or place of business or business connection in India. However, the correct interpretation of the Double Taxation Avoidance Agreement would be to include the royalties from patents, copyrights or trade marks and the like within the expression "industrial" or "commercial" profits. This income would not be royalties within the meaning of the Double Taxation Avoidance Agreement but would fall under the expression "commercial or industrial profits." In the absence of a permanent establishment, such income would not be taxable in India.	Siemens Aktiengesellschaft	(2009) 310 ITR 320 177 Taxman 81 (Bom).
DOUBLE TAXATION AVOIDANCE AGREEMENT – INDIA & UAE – ART. S. 5 & 7, INCOME TAX ACT	5(2)(b) & 9(1)(i)	Activity of Petitioner's liaison offices in India which is confined to downloading of information from the main servers located in UAE for drawing cheques on banks in India and despatching the same to the beneficiaries as per the instructions of the NRI remitter is auxiliary to the main activity of the petitioner and falls within the exclusionary clause in art 5(3)(e) of the DTAA between India and UAE. Impugned ruling of the Authority holding that the income of the petitioner is to be deemed to be accruing in India in view of s. 5(2)(b) and 9(1)(i) without considering first the provisions of DTAA is quashed. Liaison offices do not constitute a P.E. since liaison offices perform auxiliary functions and are thus covered under Art 5 (c) (e) of the Indo-UAE Treaty.	U.A.E. Exchange Centre Ltd.	(2009) 313 ITR 94 223 CTR 250 183 Taxman 495 (Del.)
ESTOPPEL - ADMISSION BY ASSESSEE'S COUNSEL	250	Department can not invoke the principle of estoppels by acting on the request made by the assessee's counsel to postpone the assessment proceedings for giving effect to CIT(A)'s order till the receipt of order of the Tribunal. AO should	Rahghava Health Care Ltd.	(2009) 120 TTJ 124 (Visakha).



		have acted accordance with law.		
EXEMPTED INCOME - COMPUTATION OF TOTAL TURNOVER - EXPORT ORIENTED UNDERTAKING	10B	For the purpose of applying the formula under sub-s. (4) of s. 10B, the freight, telecom charges or insurance attributable to the delivery of articles or things or computer software outside India or the expenses, if any, incurred in foreign exchange in providing the technical services outside India are to be excluded both from the export turnover and from the total turnover, which are the numerator and the denominator respectively in the formula.	Sak Soft Ltd.	(2009) 20 DTR 514 313 ITR 353 30 SOT 55 (Chennai)(SB).
EXEMPTED INCOME - EXPORT - ORIENTED UNDERTAKING - UNABSORBED DEPRECIATION	10B, 32	Deduction u/s. 10B is to be allowed from total income of assessee after adjusting unabsorbed depreciation.	Jewellery Solutions International (P) Ltd.	(2009) 28 SOT 405 (Mum).
EXEMPTED INCOME - FREE TRADE ZONE - ALLOCATION OF DEDUCTIONS FOR TWO DIFFERENT PERIODS	10A, 80HHEE	For the Asst year 2003-04, assessee claimed u/s. 80HHE in respect of period 1-4-2002 to 13-1-2003 and further claimed deduction u/s. 10A, in respect of profits from 14-1-2003 to 31-3-2003 as the conditions and registration was obtained only from 14-1-2003. The tribunal held that as the assessee computed profits for two periods on reasonable basis, the claim of assessee is allowed.	Vidya Tech Solutions (P) Ltd.	(2010) 35 SOT 25 (Delhi)
EXEMPTED INCOME - FREE TRADE ZONE - MAINTENANCE OF SOFTWARE	10A	Maintenance of software being inherent part of development of software is eligible for relief u/s. 10A.	Direction Software Solutions	(2009) 28 SOT 35 (Mum) (URO).
EXEMPTED INCOME- FOREIGN EXCHANGE GAIN	10B	Gain on account of foreign exchange rate fluctuation qua export proceeds credited /deposited in EEFC account of assessee in foreign exchange is export realization ,hence constitutes profit derived from export business eligible for exemption u/s. 10 B.	Banyan Chemicals Ltd.	(2009) 117 ITD 376 20 DTR 410 121 TTJ 751 310 ITR 384 (AT)(Ahd)(TM).
EXEMPTION	10(23)(vi)	Upto AY 2001-02 the prescribed authority for granting approval u/s. 10(23)(vi) was the Central Board of Direct Taxes (CBDT), thus approval granted by the CBDT for AY upto 2001-02 cannot be cancelled/rescinded by the Director General of Income Tax as the same was beyond his jurisdiction.	Maharashtra Academy of Engineering & Educational Research	(2009) 28 DTR 143 (Bom).
EXEMPTION	10(23C)(vi)	Where the assessee is a Company registered u/s. 25 of the Companies Act, 1956 created for imparting, spreading and promoting knowledge in the field of accountancy, it will fall under the category of institutions which are for research and charitable purpose, eligible for exemption u/s. 10(23C)(vi) of the Act. Merely because such institution is charging fees and remuneration for research projects undertaken by it does not make it commercial activity.	ICAI Accounting Research Foundation & Anr.	(2009) 28 DTR 220 (Del).
EXEMPTION	10(23C)(vi)	Where the assessee is an educational institute, imparting education in a systematic manner, and the institution is recognized as a 'deemed university', by the University Grant Commission	Jaypee Institute of Information Technology Society	(2009) 28 DTR 242 (Del).



		(U.G.C.), exemption u/s. 10(23C)(vi) of the Act cannot be denied to such society.		
EXEMPTION - ENCODING AND DECODING AN ELIGIBLE EOU	10B	Assessee having obtained order from the Development Commissioner stating that the assessee has been abonded and does not enjoy the status of 100% EOU, and the same having being produced before AO though not filed before the due date of filling of return as required by s. 10B(8), the assessee has to be held as opted out of the benefit of s. 10B and entitled to carry forward the loss.	Torry Harris Sea Foods (P) Ltd.	(2009) 28 DTR 165 (Coch)(Trib).
EXEMPTION – EXPORT - INTEREST ON FIXED DEPOSITS	10A	Interest earned on fixed deposits and miscellaneous income, is not profit derived by an undertaking from export, hence not exempt u/s. 10A.	Global Vantage P. Ltd.	(2010) 1 ITR 326 (Delhi) (Trib)
EXEMPTION – EXPORT OF MANUFACTURED AND TRADED GOODS	10A	Assessee is entitled to relief u/s. 10A on export of both manufactured goods as well as purchased goods.	T. Two International (P) Ltd.	(2010) 122 ITD 255 122 TTJ 957 22 DTR 342 (Mum)(Trib).
EXEMPTION – EXPORT ORIENTED UNDERTAKING	10B	Activity of cutting, polishing and sizing of granites amounts to production in case of assessee engaged in activity entitled to exemption u/s. 10B of the Act.	Fateh Granite (P) Ltd.	(2009) 20 DTR 257 (Bom).
EXEMPTION – FREE TRADE ZONE (STPI)	10A	Assessee company's unit at Chennai was approved as "Software Technology Park of India" (STPI), and subsequently after the approval obtained from respective authorities, operations were transferred to Kochi, and carried under same registration number. Held, assessee is entitled to exemption u/s. 10A as it was merely a case of shifting of business from one place to another and not a new business, and there is no violation of sub clause (ii) & (iii) of s. 10A(2), its only a seeking of continuation of exemption u/s. 10A.	Paradigm IT (P) Ltd.	(2009) 180 Taxman 24 (Chennai).
EXEMPTION – INTEREST EARNED – ELIGIBLE	10B	Interest income received by the assessee from its sister concern will be eligible for exemption u/s. 10B. Profit and gains of business or profession and income from other sources are different species of income. S. 2(24) of the Income-tax Act does not categories separately profits and gains of business or profession. The expression "profits and gains" as used in s. 2(24) is wider and is not confined to "profits and gains of business or profession". S. 10B provides for exemption with respect to any "profits and gains" derived by the assessee, and is not confined to "profits and gains of business or profession".	Hycon India Ltd.	(2009) 308 ITR 251 (Raj).
EXEMPTION – KEYMAN INSURANCE	10(10D)	In view of the conflicting clarification given by the LIC, regarding the status of keyman insurance policy after assignment, issue regarding taxability of the amounts received on the maturity of such policy remanded to AO for fresh consideration after obtaining clarification from higher authorities	Rajan Nanda	(2009) 31 DTR 249 126 TTJ 924(Del)(Trib).



		of LIC.		
EXEMPTION – MANUFACTURE	10B.	Activity of processing of stone, marble, granite, etc., amounts to manufacture and therefore assessee was entitled to exemption u/s. 10B.	Ramsons Organics Ltd.	(2009) 31 DTR 83 (Del).
EXEMPTION - MANUFACTURE OR PRODUCTION – CUTTING OF GRANITES -EXPORT UNDERTAKING	10B	The activity of cutting, polishing and sizing of granites amounts to production and assessee engaged in such activity is entitled to exemption u/s. 10B.	Fateh Granite (P) Ltd.	(2009) 20 DTR 257 222 CTR 638 (Bom).
EXEMPTION – OPTION TO CLAIM	10B	The procedure laid down to avail / or not to avail concession provided u/s. 10B are just directory and not mandatory. Held, that letter filed for withdrawing the claim during assessment proceeding cannot be rejected while framing assessment u/s 143(3). Also held that AO cannot thrust exemption u/s 10B.	Techtran Polylenses Ltd.	177 Taxman 28 (Hyd).
EXEMPTION – OWNERSHIP OF PLANT & MACHINERY EXPORT ORIENTED UNDERTAKING	10B	It is not the requirement of the section that the assessee should itself own plant and machinery for manufacture even if the assessee gets it manufactured by others under its direct supervision, the assessee is entitled to exemption u/s. 10B.	Techdrive (I) (P) Ltd.	(2009) 122 TTJ 264 21 DTR 52 (Del)(Trib).
EXEMPTION – SCHEDULED TRIBE - MIGRATED MEMBER	10(26)	Member migrating from his place of origin in one areas specified in s. 10(26), to another area also specified therein, benefit of exemption is available.	Pradip KR Taye and others	(2010) 320 ITR 29 (Gauhati)(FB).
EXEMPTION – SETTING OF LOSS	10A, 70.	S. 10A was not forming part of sections mentioned in s. 29, business losses of the undertaking whose income was not exempt u/s. 10A, can not be setoff against profits of the undertaking whose income is exempt. Loss of the non STPI is allowed to be carried forward.	Honeywell Technology Solutions Lab Pvt. Ltd.	263 (2009) 41 - B BCAJ p 34. (December).
EXEMPTION – STP UNIT OUTSIDE STP	10A	There is no requirement in Notification No. 30 (RE) 1992-97 dt 22-3-1994, that a particular unit must be located in side STP and it is enough if the unit situated at a particular location is notified as STP, in view of the said notification, assessee's unit located at Gurgaon with the approval of Government of India is entitled to exemption u/s. 10A.	Xerox India Ltd.	(2010) 127 TTJ 84 (Del)
EXEMPTION – SPLITTING UP OR RECONSTRUCTION	10A.	Assessee having taken over the medical transcription unit from another company along with obligation of exports, etc, it is a case of purchase of business undertaking in view of circular no F. No 15/S/63–ITA-1) dt. 13 Dec 1963, it can not be said to be a case of formation of undertaking by using assets previously used and, therefore, assessee is entitled to deduction u/s. 10A, more so as deduction has already been allowed to the assessee for two assessment years.	Heartland K.G. Information Ltd.	(2009) 31 DTR 98 (Chennai)(Trib).
EXEMPTION- MANUFACTURE OR	10B	Assessee unit involved in developing test programs that would automate the function of verifying the	E-Infochips Ltd.	(2009) 25 DTR 299



PRODUCTION		functioning of complete designs involving millions of transistors on a single chip which chip verification requires development of highly sophisticated test programs in very special high level languages and also involved in software development and manufacturing of such programs from scratch and designing developing for its clients and testing it to ensure precision, is engaged in software development activity for purpose of grant of relief u/s. 10B		124 TTJ 176 (Ahd) (Trib).
EXEMPTION- MANUFACTURE OR PRODUCTION – EXEMPTION	10B(7), 10BB	Assessee firstly receiving the input data from its clients in the form of electronic file format and then after doing the job, handing over the final design in the electronic data satisfying the condition of “manufacture or production” of an article or thing within the meaning of s. 10B r.w.s. 10BB hence eligible for relief u/s. 10B.	Tecnimont ICB (P.) Ltd.	(2009) 123 TTJ 680 119 ITD 151 (Mum).
EXEMPTIONS – SCHOLARSHIP	10(16)	Scholarship or Stipend received by a student from Government for pursuing higher studies can not be termed as salary and the same is exempt u/s. 10(16).	Rahul Tagnoit	(2009) 123 TTJ 251 (Chd).
EXPENDITURE ON SCIENTIFIC RESEARCH FOR PARENT COMPANY – NOT ELIGIBLE FOR DEDUCTION	35(1)(iv)	Assessee carrying on/doing no business for itself but only carrying out research and development work for its parent company, results of which were to be used by parent company for extension of parent company’s business. It was held that there should be a business carried on by the assessee and the scientific research should relate to that business which is carried on by the assessee. scientific research, per se, is not contemplated as a ‘business’ by the provisions of s. 35(1)(iv) r.w.s. 43(3)(iii)(a). Assessee’s activity was facilitating the extension of business of its parent company in USA and not that of its own and hence, CIT(A) was justified in holding that assessee was not entitled to deduction u/s. 35(1)(iv).	Enem Nostrum Remedies (P) Ltd.	(2009) 28 DTR 43 (Mum.)
EXPENSES – TRAINING FEE BEFORE INSTALLATION OF PLANT TO BE CAPITALISED	32	The expenses incurred by Assessee towards training fees of its personnel before setting up of plant were to be capitalized as part of plant and machinery and depreciation was to be allowed in respect of the same.	Gujarat Guardian Ltd.	(2009) 177 Taxman 434 (Del.)
EXPORT - COMPUTATION – DEPB	28(iiid), (iiie) 80HHC(3)	What treatment should be given to DEPB license benefits / receipts by the assessee while computing deductions u/s. 80HHC(3) of the Income-tax Act. Matters were set aside to the AO.	Zaveri and Co. Exports	(2008) 307 ITR 1 (AT) (Ahd)(SB).
EXPORT - COMPUTER SOFTWARE	80HHE	Services rendered by assessee’s employees abroad were both for onsite development of software, including services for such development and also in connection with the development or production of computer software entitling assessee to deduction u/s. 80HHEE.	Information Architects	(2009) 123 TTJ 35 (Mum.)
EXPORT – COUNTER SALE DEDUCTION	80HHC	No deduction is available on Counter Sales to foreign tourists in convertible foreign exchange	Tribhowandas Bhimji Zaveri (Delhi) P. Ltd.	(2009) 308 ITR 18 (AT) (Mum.)



		because they did not give any undertaking to take the goods out of India and there was no evidence regarding clearances of transactions through any customs stations in India.		
EXPORT – DEDUCTION	80HHC	Amount received by the assessee towards quality claim for raw materials does not form part of the ‘total turnover’ for the purpose of calculating deduction u/s. 80HHC of the Act.	K.R. Ushasree	(2009) 18 DTR 113 (Ker)
EXPORT – DEDUCTION – ELIGIBLE PROFITS	80HHC	Assessee is entitled to deduction u/s. 80HHC on the eligible profits without reducing the deduction given u/s. 80IB.	Sreeja Hosieries	(2009) 33 SOT 29 22 DTR 465 122 TTTJ 849 (Chennai)
EXPORT - DEDUCTION - EXPORT AS WELL AS LOCAL SALES SEPARATE BOOKS OF ACCOUNTS	80HHC	Assessee having maintained separate books of accounts for export business and local business deduction u/s. 80HHC is to be computed on the basis of total turnover, export turnover and profits of the business of the export division alone and not the total turnover and the profits of the entire business of the assessee.	Sivagami Match Industries	(2009) 24 DTR 109 (Mad.)
EXPORT – DEDUCTION – EXPORT AS WELL AS LOCAL SALES SEPARATE BOOKS OF ACCOUNTS	80HHC	Where business of the assessee consists of export business as well as domestic business, then s. 80HHC(3)(b) applies and not 80HHC(3)(a). Therefore, deduction is allowable on pro rata basis. Rathore Bros (2002) 254 ITR 656 (Mad.) dissented from; Indian Spices Company (2004) 267 ITR 445 (Ker.) followed.	Jindal Fine Industries	(2009) 210 Taxation 1 (P&H).
EXPORT – DEDUCTION – LOCAL SALES	80HHC	For the purpose of computing deduction u/s. 80HHC of the Act, local sales does not form part of the ‘total turnover’.	FAL Industries Ltd.	(2009) 17 DTR 308 314 ITR 47 (Mad).
EXPORT – DEPB – EXCESS PROVISION – DEDUCTION	80HHC, 41(1)	a) Held, that Assessee is entitled for deduction in respect of DEPB credits utilized by the Assessee itself as per first proviso below sub-s. (3) of s. 80HHC. b) Excess provision written back, and considered as business profits u/s 41(1) cannot be considered as in the nature of any other receipt of similar nature as provided in clause (baa) of explanation to s. 80HHC, so as to exclude 90% of such amount for purpose of computing deduction u/s 80HHC.	Polyplex Corp. Ltd.	(2009) 176 Taxman 57 122 TTTJ 949 (Delhi).
EXPORT – PROFIT OF THE BUSINESS – DEPB	80HHC	If an assessee sells the DEPB credit in the open market, then the entire sale proceed becomes profit since no specific expenditure is incurred in obtaining such credit and 90% of the sale value is to be excluded in computing the profits of the business as per cl. (baaa) of explanation to s. 80HHC. Assessee was entitled to deduction with reference to profit on sale of DEPB entitlement only and not with reference to all the three export incentives received by the assessee i.e. (1) profit on sale of DEPB entitlements (2) duty draw back and (3)	Yasmeen Silk Corporation	(2008) 16 DTR 507 (Mum.) (Trib.)



		NOE quota transfer fee. Editorial note:- On the issue of taxability of DEPB matter is pending before special bench in M/s. Tanmay Exports & Kalpatara Colours & Chemicals		
EXPORT - PROFIT ON CANCELLATION FORWARD EXCHANGE CONTRACTS	80HHC	Profits on cancellation of forward exchange contracts were assessee's profits of business, but as such profits were not derived from export activity and were received from banks in India not convertible foreign exchange in terms of sub s. (2) of s. 80HHC, 90 percent of the same has to be reduced from profits of business as per Expln. (baa) of s. 80HHC.	Intergold (I) Ltd.	(2009) 24 DTR 250 124 TTJ 337 (Mum) (Trib.)
EXPORT - PROFITS OF BUSINESS – PROCESSING / FABRICATION CHARGES RECEIVED FROM OTHER EXPORTERS	80HHC	The processing / fabrication charges on the goods which were ultimately exported by other exports for whom processing was undertaken by the assessee, such income would form part of one of the components of business profits, as the said activity would have direct and immediate nexus with the activity of export.	Southern Sea Foods Ltd.	(2009) 184 Taxman 86 28 DTR 108 225 CTR 256 (SC)
EXPORT – RESERVE CREATED SHORT	80HHC	The Supreme Court dismissed the appeal by the assessee from the decision of the High Court where it was held that where the reserve created for the purpose of special deduction u/s. 80HHC is of a lesser amount then deduction would be allowed only of the lesser amount supported by the creation of the reserve.	Prakash Brothers	(2009) 309 ITR 446 (SC)
EXPORT – SPECIAL DEDUCTION - BROADCASTING RIGHTS	80HHC	License for overseas exhibition or broadcasting rights for cinematographic films is export of merchandise or goods for the purpose of s. 80HHC of the Income-tax Act, 1961.	Firoz Khan	(2009) 313 ITR 123 (Bom.)
EXPORT – TOTAL TURNOVER FOR COMPUTATION OF EXEMPTION / DEDUCTION	10B / 80HHC / 80HHE / 80HHF	Expenses on freight, telecommunication charges or insurance incurred outside India or expenses incurred in foreign exchange for providing technical services outside India are required to be excluded from Export Turnover as defined in Explanation 2 below s. 10B and similarly, in view of the principle of parity such expenses have to be excluded for the purpose of computing 'Total Turnover' while applying the provisions of s. 10B(4) of the Act. In this regard the ratio laid down by the Supreme Court in case of Laxmi Machine Works [290 ITR 667] was considered and applied.	Advent Development Centre (India) & Others	(2009) 313 ITR 353 (AT)(Chennai)
EXPORT – UNABSORBED BUSINESS LOSS AND UNABSORBED DEPRECIATION - CARRY FORWARD AND SET OFF	10A	After the amendment with effect from April 1, 2001, onwards the brought forward loss pertaining to the specific undertaking eligible for deduction u/s. 10A are allowed to be carried forward and set off against the income of such undertaking in the future assessment year and setoff within the block period itself.	Global Vantage P. Ltd.	(2010) 1 ITR 326 (Delhi) (Trib.)
EXPORT ORIENTED UNDERTAKING – CARRY FORWARD LOSSES OF EARLIER	10B	Against total income of relevant assessment year and, it is out of balance income only that deduction u/s. 10B can be granted.	Sword Global (I) (P) Ltd.	(2010) 122 ITD 103 (Chennai)



YEARS				
EXPORT ORIENTED UNDERTAKING – PROPORTIONATE DEDUCTION	10B	Where assessee an export oriented unit, had domestic sale more than 25 percent of total sales value during relevant assessment year, it was entitled to partial deduction proportionately on export turnover as per provisions of sub s. (4) of s. 10B.	Tube Investments of India Ltd.	(2009) 117 ITD 239 121 TTTJ 577 (Chennai)(TM).
FIRM- ASSESSMENT- SALARY TO PARTNER - HUF	40(b)	Where a joint Hindu family is a partner and the karta of such joint family is given salary, such salary income being reward for service in individual capacity should be eligible deduction.	Unimax Laboratories	(2009) 311 ITR 191 (P&H).
GIFT – AGRICULTURAL LAND	56(2)(v)	Value of agricultural land by a non–relative can not be added to total income of done u/s. 56(2)(v) of the Act, since agricultural land cannot be considered as “ any sum of money” .	Kumar Bader	Tax World Vol XLII 207 – October 2009
GIFT – HUF - DAUGHTER IN LAW AT THE TIME OF MARRIAGE	2(xii), 3	A Karta of the family or father in law has no moral obligation to gift gold ornaments to daughter in law and therefore, gift of gold by the father in law at the time of her marriage is chargeable to gift tax.	Triveni Devi	(2009) 24 DTR 143 (Raj.)
HEAD OFFICE EXPENSES - APPLICABILITY OF 44C - EXPENSES INCURRED BY OVERSEAS BRANCHES OF THE ASSESSEE BANK FOR ITS INDIAN OPERATION ARE NOT HIT BY SECTION 44C	37, 44C	The book entries are not very important for determining the correct assessed income. The claim can be made through the ‘computation of income’ route. The provisions of s. 44C are in applicable in a case of expenses incurred exclusively by the bank branches abroad in respect of NRI desk maintained by those branches. Therefore, the provisions of s. 44C of the Income-tax is not applicable in respect of expenses incurred by the overseas branches of the assessee bank for its Indian operations are not hit by s. 44C.	Bank of America NT & SA	(2009) 24 DTR 409 (Mum)(Trib).
HIGH COURT JUDGE- ELIGIBILITY- PRACTICE AS ADVOCATE IS NOT REQUIRED FOR APPT AS HIGH COURT JUDGE	Art. 217(2) Art. 217(1)	Practice as an advocate is not mandatory for appointment of High court Judge.	Mahesh Chandra Gupta	www.itatonline.org
INCOME – ACCOUNTANT – DEPB	2(24)	The Assessee notionally computed the value of advance licences/DEPB and credited to the Profit and Loss account. In its return of income filed, the said amount was excluded from its income. The AO added the same to the income of the assessee. Held that merely because book entries were passed when there was no real income accrued, there was no justification to support the addition. The addition was deleted.	National Leather Mfg. Co.	ITA No. 8294/Mum/2003, Bench – E, AY 2000-01, dt. 13-6-2008 BCAJ p. 796, Vol. 40-B, Part 6, March 2009.
INCOME – ACCRUAL	4	Resolution passed on last day of previous year forgoing interest, will not wipe out interest accrued during the year.	Sarabhai Holdings P. Ltd.	(2008) 307 ITR 89 (SC).
INCOME – ACCRUAL	5	Assessee had offered interest income accrued to it though not actually received by it on the loans, recovery of which was doubtful. Thereafter,	Eicher Ltd.	(2009) 26 DTR 310 (Del.)



		assessee entered into a settlement with the debtor and also assigned the entire debt to a third party. Amount received by it on such assignment, which was lower than the amount of interest on which the assessee had already paid tax, addition/cannot be made on account of accrued interest.		
INCOME – ACCRUAL – DUTY DRAW BACK	5	Duty drawback and cash assistance could not be charged to tax on accrual basis.	Bajaj Auto Ltd.	(2009) 20 DTR 241 (Bom)
INCOME – ACCRUAL OF INCOME	5	Where the assessee was in a transport franchisee business and the franchisee agreement was rescinded and there was no evidence that the assessee conducted the said business thereafter, addition of notional income from such business cannot be brought to tax on a notional basis under the Act.	Jaipur Golden Transport Co. (Regd.)	(2009) 25 DTR 236 (Del.)
INCOME – ACCRUAL OF INCOME – MERCANTILE SYSTEM OF ACCOUNTING	145	The AO rejected the claim of the assessee for exclusion of interest on the ground that though the interest had accrued in earlier year, it was received during the current year. The AO also considered the income on the principle of accrual and confirmed the assessment. The CIT(A) confirmed the same. However, the ITAT disagreed without AO and CIT(A). On Appeal, to the High Court by the Department, it was held that ITAT rightly decided that the term accrued but not due showed that the right to receive the interest had not arisen to the assessee and that the interest was receivable only from April, 1st of the next year. Thus, the interest income could not be included in the taxable income of the assessee.	Lucas Indian Services Ltd.	(2009) 315 ITR 273 (Mad.)
INCOME – BENEFIT OR PERQUISITE - PAYMENT OF LOAN	10(3), 28(iv), 41(1)	Amount paid by share holder company, which purchased all the shareholdings of assessee, for discharging loan of assessee owed to bank which amount was credited by assessee to capital reserve account is not income and can not be taxed either u/s. 10(3) or 28(iv) or s. 41(1) of the Act.	SmartTalk (P) Ltd.	(2009) 122 TTJ 782 119 ITD 13 (Mum.)
INCOME – CAPITAL GAINS- INCOME FROM OTHER SOURCES	2(24), 45, 56	The assessee promoter of society entered in to an agreement with developer, however due to certain legal disputes, developer could not honour the commitment. The assessee received certain compensation from the developer. The assessee contended that the amount is not taxable and alternatively it can be assessed as capital gains. The court held that the amount received by the assessee to indemnify “D” from any action that might have been taken against him by persons who had booked the flats through assessee, was to be assessed as “income from other sources”.	Manoj B. Joshi	(2009) 179 Taxman 30 (Bom).
INCOME - CAPITAL OR REVENUE RECEIPT – INCENTIVE - SUBSIDY	4	Incentives in the form of excise duty refund and interest subsidy which has been granted for substantial expansion of unit, only after commencement of production and not for setting up of new industries or to purchase capital assets, same constitute revenue receipt.	Shree Balaji Alloys	(2010) 33 DTR 67 / 127 TTJ 129 (Asr)
INCOME – CASH	68 & 69	There is no reason to doubt the genuineness of the	Kanchan Singh	(2009) 17 DTR 389



CREDIT - GIFT – NRI - INCOME FROM UNDISCLOSED SOURCES		<p>gift by K to the assessee. The assessee was able to establish the nature and source of money, just because the letter addressed by the AO having been returned unserved, additions cannot be made.</p> <p>Editorial Note:- Judgment of Supreme Court in CIT vs. P. Mohankala (2007) 291 ITR 278 (SC), considered.</p>		221 CTR 456 (All)
INCOME - CASH CREDIT - GIFT FROM NRI –	68	<p>Assessee having produced an affidavit from the Donor copy of NRI account in the name of Donor, certificate affirming gross salary of the donor and the copy of the official cheque in the name of the assessee from his brother, an NRI has to be treated as genuine in the absence of any contrary evidence to refute the same.</p> <p>Editorial Note:- After considering the judgment of Apex Court in P. Mohankala & Ors. (2007) 291 ITR 278 (SC)</p>	Vijay Prakash (HUF)	(2009) 120 TTJ 429 (Asr.)
INCOME – CESSATION OF TRADING LIABILITY	28(iv) & 41(1)	<p>Reduction of liability availed by the assessee on the basis of One Time Settlement Scheme in respect of its outstanding term loans is not to be treated as taxable u/s 28(iv) or u/s 41(1).</p> <p>Editorial note - Judgment of Bombay High Court in Solid Containers v Dy CIT (2009) 308 ITR 417 (Bom) considered and distinguished.</p>	Accelerated Freez & Drying Co. Ltd.	(2009) 31 SOT 442 180 Taxman 68 (Cochin).
INCOME - CONTRACTUAL PAYMENT TO RETIRING PARTNER	4, 28	<p>Contractual payment made by the firm to its retiring partners, in terms of partnership deed, is not includible in the total income of the firm, since to that extent income has never reached the hands of the assessee.</p>	RSM & Co.	ITA No 3269/Mum/2007 Bench D dt. 12-10-2009 / 391 (2009) 41-B BCAJ Jan 2010.
INCOME – GIFT RECEIVED BY POLITICIANS	4	<p>It was found that the money received by the agent was spent on the expenditure of jeeps required for the election campaign of the assessee. The Court held that every receipt is not taxable as income. It may be receipt, but not necessarily “income”. Hence, the order of Tribunal was confirmed.</p>	Rajesh Pilot	(2008) 175 Taxman 8 (Delhi)
INCOME – MUTUALITY - INTEREST – DIVIDEND	4	<p>Assessee society having been formed for the mutual benefit of its members, income earned by it by way of interest and dividend by making investment of surplus fund which is wholly contributed by the members is governed by the principle of mutuality and is not taxable.</p>	Canara Bank Golden Jubilee Staff Welfare Fund	(2009) 19 DTR 64 (Kar).
INCOME – MUTUALITY – INTEREST INCOME NOT EXEMPTED	4	<p>Investment of surplus funds by the assessee club with member banks and institutions not with a definite idea of using the same in any specific projects for the further development of the infrastructural facilities of the club did not satisfy the concept of mutuality and therefore benefit of exemption cannot be extended to the interest income.</p>	Madras Gymkhana Club	(2009) 226 CTR 176 (Mad).
INCOME – MUTUALITY – NON-OCCUPANCY	4	<p>Assessee housing co-operative society is not liable to income tax in respect of excess occupancy</p>	C.C.I. Chambers Co-operative Housing	(2008) 16 DTR 334 (Mum) (Trib).



CHARGES		charges recovered by it from its members on the principle of mutuality as the test of complete identity between contributors and participant is satisfied.	Society Ltd.	
INCOME – NO MOTIVE OF PROFIT	2(15) 11 , 12	<p>Proviso to s. 2(15) does not apply to incidental services rendered without profit motive</p> <p>The assessee, a statutory Board, was set up for prevention of pollution of streams and wells in the State and other allied activities. It derived income from various testing charges etc. The CIT granted registration u/s 12AA of the Act on the basis that the activities of the assessee constituted a “charitable purpose” u/s 2(15) and that its’ income was eligible for exemption u/s 11. S. 2(15) was amended by the FA 2008 w.e.f AY 2009-2010 to provide that the term ‘advancement of any object of general public utility’ would not constitute a “charitable purpose” if “it involves the carrying out of any activity in the nature of trade, commerce or business, or any activity of rendering any service in relation to such trade, commerce or business, for a cess or fees or any other consideration, irrespective of nature of use or application of the income from such an activity”. Pursuant thereto, the CIT withdrew the registration granted u/s 12AA on the ground that (i) the assessee was a ‘regulatory agency’ and not engaged in a ‘charitable activity’ and (ii) the activities were carried out in a commercial manner with a view to earn profits and so were excepted from the definition of the term “charitable purpose”. On appeal by the assessee, HELD reversing the CIT:</p> <p>(1) The fact that the assessee is a regulatory body does not mean it cannot pursue an ‘object of general public utility’ which qualifies to be a charitable activity u/s 2(15). The scope of the expression ‘any other object of general public utility’ is very wide, though it excludes objects of private gain such as an undertaking for commercial profit even though the undertaking may subserve general public utility. On facts, as the assessee was engaged in the activities of “prevention, control or abatement of pollution”, its objects were of general public utility;</p>	Himachal Pradesh Environment	www.itatonline.org
INCOME – PRINCIPLE OF MUTUALITY – CO-OPERATIVE SOCIETY	4	<p>Bye-laws themselves provided for non-occupation charges. In these circumstances, the principle of mutuality would apply. The non-occupancy charges were not taxable.</p> <p>Editorial Ref.: Sind Co. Op. Hsg. Society v. CIT (2009) 317 ITR 47, 182 Taxman 346, 226 CTR 145 (Bom).</p>	Mittal Court Premises Co-operative Society Ltd.	(2010) 320 ITR 414 (Bom)
INCOME – PROFITS CHARGEABLE	41(1)	Waiver of loan by creditor not being in respect of trading liability, S. 41(1) did not apply.	Mindteck (India) Ltd.	(2009) 124 TTJ 830 (Mum).



INCOME – REAL INCOME ACCRUAL IS LIABLE TO TAX	4	What could be assessed was real income as income tax is tax on income. The test therefore, before income can be taxed is whether there is real accrual of income. Since there was no real accrual of income to the assessee and it was only on arbitral proceedings coming to an end and award being passed, that income received by assessee would be liable to be assessed.	FGP Ltd.	(2009) 177 Taxman 147 (Bom)
INCOME - REIMBURSEMENT OF EXPENSES	4	Payment by way of reimbursement of expenses incurred on behalf of payer is not income chargeable to tax in the hands of payee.	Seimens Aktiengesellschaft	(2008) 15 DTR 233 (Bom.)
INCOME – REMISSION OR CESSATION OF LIABILITY	41(1)	Assessee having shown the amount payable by it to another company as it to another company as an existing liability in its books and written back the same, it cannot be said that the aforesaid liability has ceased to exist and therefore it cannot be treated as income by invoking the provisions of s. 41(1).	GP International Ltd.	(2010) 33 DTR 163 (P&H)
INCOME - REMISSION OR CESSATION OF TRADING LIABILITY - LIMITATION OF TIME	41(1)	When the assessee continued to reflect or record liabilities as still payable to creditors and had not written off ultimately in books of account and moreover there was no evidence to indicate that said liabilities had ceased to exist, question of taking such outstanding liabilities as deemed profits did not arise.	DSA Engineers (Bombay)	(2009) 30 SOT 31 (Mum.)
INCOME – REMISSION OR CESSATION OF TRADING LIABILITY- ONE TIME SETTLEMENT OF LOAN BY BANK	41(1)	Assessee had not got any deduction on account of acquisition of capital assets as it had been reflected in the balance sheet and not in the profit and loss account and the remission of the principal amount of loan obtained from the bank and financial institution had not been claimed as expenditure or trading liability in any earlier year, s. 41(1) was not applicable. (followed Mahindra & Mahindra Ltd. v CIT (2003 / 261 ITR 501 (Bom)).	Tosha International	SLP (Civil) No. 18699 of 2009 dt 24-7-2009 (2009) 319 ITR 7 (st)(SC).
INCOME- CAPITAL OR REVENUE RECEIPT- NON-COMPETE FEE	4	Non compete fee received by assessee for refraining from manufacturing and selling time pieces for a period of ten years after the sale of its units while it was continuing with its other business activities constituted revenue receipt.	Tata Coffee Ltd.	(2009) 29 DTR 336 (Kar).
INCOME DEEMED TO ACCRUE IN BUSINESS IN INDIA – NEWLY INSERTED EXPLANATION TO SECTION 9 BY FINANCE ACT, 2007 –	9	The deductor of TDS (i.e. the payer) is entitled to question the imposition of tax liability on the payee. In order to impose liability on a non-resident assessee for income from services rendered to an Indian party, u/s. 9 of the Act, it is imperative that services are rendered in India and are also utilised in India- the twin conditions have to be satisfied. To this extent, the newly inserted Explanation to s. 9 does not disturb the ratio of the Supreme Court's decision in Isshikawa Jima Harima.	Jindal Thermal Power Co.	(2009) 182 Taxman 252 (Kar.)
INCOME DEEMED TO ACCRUE OR ARISE IN INDIA	9(1), 9(1)(vii), 90	Assessee, UK firm having fulfilled the condition of presence in India for 90 days or more as provided	Clifford Chance	(2009) 17 DTR 1 176 Taxman 458



		in Art. 15 of DTAA between India and UK, fee received by it for legal services rendered to its clients in India is chargeable to tax u/s. 9(1)(vii) only to the extent referable to services rendered in India to the exclusion of services rendered from abroad.		221 CTR 1 (Bom.)
INCOME DEEMED TO ACCRUE OR ARISE IN INDIA – BUSINESS CONNECTION	9(1)(i), Expln. 1(b)	Assessee, having its main office in USA having opened a liaison office in India solely for the purpose of helping its affiliates located at different parts of the world to buy goods etc. for trading operations, acting through liaison office as purchasing agent, placing orders with local manufacturers specifying the quantity, price, the affiliate with address on whom the bill is to be raised and the destination and not in any way communicating with the manufacturers other than supervising the manufacturing operations to ensure quality as per approved samples and specifications, the same amounts to purchase in the course of export and Expln. 1(b) to s. 9(1)(i) is attracted, hence no income is deemed to accrue or arise to assessee in India.	Nike Inc.	(2009) 21 DTR 107 (Bang.) (Trib).
INCOME DEEMED TO ACCRUE OR ARISE IN INDIA – FEES FOR TECHNICAL SERVICES – WEBSITE HOSTING – PAYMENT TO NON RESIDENTS – BUSINESS DISALLOWANCES	9	Payments made to non-residents on account of rentals for hosting of websites on servers are not in nature of interest of royalties or fee for technical services or other sum chargeable to tax in India. Provisions of Article 26(3) DTAA between India and USA neutralizes rigor of provisions of s. 40(a)(i).	Millennium Infocom Tech Ltd.	(2009) 309 ITR 18 117 ITD 114 (Delhi)
INCOME DO NOT FORM PART OF TOTAL INCOME- VOLUNTARY RETIREMENT	10(10C)	An employee, who takes voluntary retirement, is entitled to exemption u/s. 10(10C).	Krishana Gopla Saha	(2009) 121 ITD 368 (Kol) (TM).
INCOME FROM HOUSE PROPERTY - ARREARS OF RENT - INCOME FROM OTHER SOURCES	22, 56	Arrears of rent on account of retrospective enhancement, in Hamilton's case it was laid down that retrospective increase of rent shall be the annual rent of the said past year or years but can not be said to be the annual rent of the year in which the said amount was received and can not be brought under income from other sources. On the other hand in Hope (India) case it was laid down that a mere claim for enhanced rent cannot amount to income receivable within the meaning of s. 5, hence, there is no conflict between the decisions in hope (India) Ltd. vs. CIT (1999) 238 ITR 740 (Cal.) and Hamilton & Co. (P) Ltd. vs. CIT (1992) 194 ITR 391 (Cal.)	P.G. & Sawoo (P) Ltd. & Anr.	(2008) 16 DTR 401 221 CTR 36 (Cal) (FB).
INCOME FROM HOUSE PROPERTY - ARREARS OF RENT RECEIVED	22, 23, 25B	Arrear rent received by assessee pertaining to assessment year 1985-86 could not be brought to tax by invoking provisions of s. 25B. S. 25B inserted by Finance Act, 2000, w.e.f. 1-4-2001, is	Punalur Paper Mills Ltd.	(2009) 29 SOT 449 (Cochin)



		prospective in operation.		
INCOME FROM HOUSE PROPERTY - INTEREST FREE DEPOSIT - ANNUAL VALUE	23(1)(a)	The benefit derived by the assessee from interest-free deposit could be taken in to consideration for determination of fair rental value u/s. 23(1)(a) but the benefit derived by the assessee can not be more than lending rate at which the deposits were available in the market at particular point of time.	Baker Technical Services (P) Ltd.	(2009) 126 TTJ 455 (Mumbai)(TM).
INCOME FROM HOUSE PROPERTY - LIFT CHARGES	22	Charges received for providing lift service were to be assessed as "income from house property", if uniform service charges are to be collected from every tenant, whether he be in the first floor or top floor. Mere separate agreement for such collection would not make any difference.	Mohan's Enterprises	(2009) 182 Taxman 24 (Ker).
INCOME FROM HOUSE PROPERTY - OWNER - DEED NOT REGISTERED	22	Registration of conveyance deed is not imperative for the assessee to claim that he is not the owner and not chargeable u/s. 22. Where the assessee had sold the flat, received entire sale consideration and handed over the possession of the flat to the purchaser however, registered sale deed was still not executed, under these circumstance, it was held that the assessee ceases to be the owner of the flat for the purpose of s. 22 of the Act.	Pallonji M. Mistry (Decd.)	(2009) 19 DTR 286 178 Taxman 341 (Bom.)
INCOME FROM OTHER SOURCE - RELINQUISHING RIGHT	56	Receipt by the assessee a partner for relinquishing his right in the firm so as to enable the firm to sell its land, pending the final decree for dissolution was liable to be assessed as income from other sources.	Visalakshy Kumaran	(2009) 18 DTR 139 (Ker)
INCOME FROM OTHER SOURCES - BUSINESS INCOME	56(2)(iii)	<p>Hospital building was given on lease with equipment and machinery. Lease rental income to be treated as income from other sources and not from business.</p> <p>The assessee company constructed hospital building and ran the same from A.Yrs. 1991-92 to 1997-98.</p> <p>As the assessee company suffered a heavy loss in running the same, it leased the hospital building alongwith equipment and machinery to A on a monthly lease.</p> <p>The learned AO treated the said lease rental income as income from other sources instead of income from business as claimed by assessee. On Appeal to CIT(A), the CIT(A) reversed AO's Order but the ITAT upheld AO's Order.</p> <p>On Appeal to High Court, the Hon'ble High Court dismissed the said Appeal by holding that the income derived out of the lease of the property and furniture as in the present case could not be treated as income from business. The finding given by the Tribunal that the income was income from other sources was correct.</p>	Orient Hospital Ltd.	(2009) 315 ITR 422 (Mad.)
INCOME FROM OTHER SOURCES -	4, 56	Interest and rent received from employees and oustees in dam area had a nature of capital receipt,	Tehri Hydro Development	(2009) 25 DTR 100



CONSTRUCTION PERIOD –INTEREST - RENT		not chargeable to tax as the construction process was still on and the assessee had yet not started the business activity.	Corporation	(2009) T.L.R. 456 183 Taxman 246 (Uttarkhand).
INCOME FROM OTHER SOURCES / BUSINESS INCOME HOTEL	28, 56	Lease of Hotel under agreement for 33 years with option of further renewal for 33 years Assessee had no intention to resume hotel business. It was held that amount received by assessee is income from other sources and not business income.	East West Hotels Ltd.	(2009) 309 ITR 149 (Karn)
INCOME FROM UNDISCLOSED SOURCE - BOGUS PURCHASES - POWER OF TRIBUNAL	254(1)	Tribunal can set aside the matter or remand it to the file of AO for further enquiry to make the proper assessment by allowing the parties including the revenue authorities to raise a contention for the first time before it.	Amar Mining Co.	(2009) 24 DTR 139 123 TTJ 473 121 ITD 273 (Ahd)(TM)
INCOME FROM UNDISCLOSED SOURCE- SLIPS	69A.	Amount shown and recorded on slips found during survey having been advanced to one person for purchase of land and that person having confirmed the same, no addition was called for simply on the basis of presumption.	Prakash Motwani	(2009) 125 TTJ 941 (Agra)(TM).
INCOME FROM UNDISCLOSED SOURCES	69A	Addition u/s. 69A in respect of unexplained jewellery and unaccounted sales – AO makes the addition merely by relying on the findings of Directorate of Revenue Intelligence and Commissioner of Customs. In the absence of any independent enquiry made by the AO, no addition is sustainable.	Vignesh Kumar Jewellers	(2009) 222 CTR 79 (Mad).
INCOME FROM UNDISCLOSED SOURCES - ADDITION	69C, 142A	There is no mention of s. 69C in s. 142, and therefore AO could not refer matter regarding cost of construction of project to DVO u/s. 142A and addition can not be made u/s. 69C.	Aar Pee Apartments (P) Ltd.	(2009) 32 DTR 92 (Del).
INCOME FROM UNDISCLOSED SOURCES - DISCLOSURE IN THE COURSE OF SURVEY	69, 133A	Addition on the basis of admission simplicities made during survey without any supporting material, which surrender was successfully retracted by assessee by annexing foot notes to the return is not sustainable.	Satish Builders	(2009) 23 DTR 171 (Del) (Trib).
INCOME FROM UNDISCLOSED SOURCES- LOOSE SHEETS	69.	Loose sheets by them self may not be enough to justify addition on estimated basis even though the explanation of the assessee is found unbelievable and circumstances may be pointing other wise.	Atam Valves (P) Ltd.	(2009) 184 Taxman 6 (P&H).
INCOME FROM UNDISCLOSED SOURCES- UNEXPLAINED INVESTMENT- RETRACTION	69B, 133A	Addition towards unexplained investment on the basis of retracted admission of assessee's partner and two dumb papers found during search, without any supporting material was rightly deleted by the CIT(A).	Ravi Agricultural Industries	(2009) 121 TTJ 903 117 ITD 338 (Agra) (TM)
INCOME- MUTUALITY – CLUB	4	Assessee was running a recreation club to its members. Its receipts from providing food, room facilities to its members and their guest was mutual income.	Delhi Gymkhana Club Ltd.	(2010) 35 SOT 335 (Delhi)



INCOME- MUTUALITY- TRANSFER FEE - NON OCCUPANCY CHARGES	4	Transfer fee and non occupancy charges received from the members are not taxable on the principle of mutuality.	Mittal Court Premises Co-operative Society Ltd.	(2009) 184 Taxman 292 (Bom).
INCOME- NOTIONAL GAIN ON FOREIGN CURRENCY SWAP	5.	Notional gain arising on revaluation of foreign currency loan at the end of relevant previous year is not a real income and therefore, it is not taxable even though assessee is following mercantile system of accounting.	Eih Associated Hotels Ltd.	(2009) 126 TTJ 246 (Kol).
INDEXATION – DETERMINATION W.R.T. PREVIOUS OWNER	48	For the purpose of computing long term capital gain arising from the transfer of a capital asset which had become property of the assessee under the gift, the first year in which the capital asset was held by the assessee has to be determined to work out the indexed cost of acquisition as envisage in explanation (iii) to s. 48 after taking into account the period for which the said capital asset was held by the previous owner. In that view of the matter the indexed cost of acquisition of such capital asset has to be computed w.r.t. the year in which the previous owner first held the asset.	Manjula Shah	ITA No. 7315/Mum/2007 www.itatonline.org
INDUSTRIAL UNDER TAKING - DEDUCTION – INTEREST ON FIXED DEPOSITS	80IB	Interest derived by the assessee on fixed deposits kept as margin money with the bank could only held as business income and the assessee would be entitled to the inclusion of the same for the purpose of computing the deduction u/s. 80IB.	Sudhir Genset Ltd.	(2009) 17 DTR 496 (Del)(Trib).
INDUSTRIAL UNDERTAKING - PROFITS FROM TRADING ACTIVITY	80HH	Trading activities carried on by the assessee are of the assessee company and not of the industrial undertaking, hence, the assessee is not entitled for deduction u/s. 80IA on the profits thereon.	Emerson Network Power India (P) Ltd.	(2009) 122 TTJ 67 19 DTR 441 (Mumbai) (Trib.)
INDUSTRIAL UNDERTAKINGS – MANUFACTURE	80I, 80HHA	Process of standardization and pasteurization does not amount to manufacture / production for purpose of claiming deduction u/s. 80I and 80HHA.	B.G. Chitle	(2008) 115 ITD 97 (Pune)(SB).
INCOME FROM UNDISCLOSED SOURCE - SEIZED LETTERS FROM THIRD PARTY	69	Merely on the basis of some letters seized from a third party in the absence of any corroborative evidence and without issuing summons to the concerned persons or making available for cross examination, the order passed by the tribunal upholding the addition is set aside.	Bangodaya Cotton Mills Ltd.	(2009) 224 CTR 62 (Cal).
INTEREST	220(2)	The AO is not justified in charging interest for the intervening period when the CIT(A) allowed the appeal in favour of the assessee to the period when the Tribunal allowed the appeal in favour of the revenue.	The Southern Paradise and Stud Developers Pvt. Ltd.	ITA Nos. 2135 & 2136 / Mum / 2008, A.Y. 1995-96 & 1996-97, dt. 27-5-2009. BCAJ P. 30, Vol. 41-A, Part 5, August 2009.
INTEREST	234A	The Supreme Court held even though the return of income is filed late, if the assessee has paid the taxes before the due date of the filing of the return which is not less than the tax payable on the	Pranoy Roy	(2009) 222 CTR 6 179 Taxman 53 19DTR 102



		returned income which has been accepted, no interest can be levied u/s. 234A.		309 ITR 231. (SC).
INTEREST	234B	Assessee's entire income being subject to TDS, it was not liable to pay advance tax and hence, no interest u/s. 234B could be charged.	Chiron Behring Gmbh. & Co.	(2009) 118 ITD 324 17 DTR 131 (Mum) (Trib).
INTEREST	234B	Once the Assessee was liable to pay Advance Tax from initial stage, the charging of interest u/s. 234B on basis of assessed tax is also mandatory.	Flexfit Industries	176 Taxman 59 (Chandigarh)
INTEREST	234B	Where the payer fails to deduct tax at source on the payments made by him to the payee, no interest u/s. 234B of the Act can be imposed on the payee.	NCG Network Asia LLC	(2009) 18 DTR 203 222 CTR 86 (Bom)
INTEREST	234C	Even though the assessee had not paid advance tax on the capital gain on sale of property on 19-6-1995 by 15-9-1995 in accordance with the proviso to s. 234C(1)(b)(ii) of the Act, levy of interest u/s. 234C of the Act in the intimation u/s. 143(1)(a) of the Act was not permissible.	Hindustan Hotels Ltd. & Anr.	(2009) 27 DTR 127 (Bom.)
INTEREST - BOOK PROFIT	115JA, 234B	Interest u/s. 234B is chargeable though computation of income is made u/s. 115JA.	Brindavan Beverages Ltd.	(2009) 32 DTR 257 (Kar).
INTEREST – BOOK PROFIT	115JA, 234C	Provisions of s. 234C are attracted even in a case where a company is assessed on the income computed u/s. 115JA. Asst CIT v Asima Syntex Ltd. (2009) 18 DTR 91 (Ahd)(SB)(Trib).	Asima Syntex Ltd.	(2009) 120 TTJ 721 18 DTR 91 (Ahd) (SB)(Trib).
INTEREST – CHARGEABILITY	115JB, 234B	Interest u/s. 234B is chargeable though computation of income is made under s. 115JB, a difficulty or impossibility as pleaded by the assessee cannot be accepted only because it is a liability under the provisions of s. 115JB.	Brindavan Beverages Ltd.	(2010) 228 CTR 1 (Kar)
INTEREST – MAT CREDIT	234B, 234C, 115JAA, 140A	Provisions of s. 234B and 234C are compensatory and not penal hence the interest under these provisions can be charged only if Government is deprived of its revenue. Interest u/ss. 234B and 234C is to be charged after tax credit (MAT credit) available u/s. 115JAA is set off against tax payable on total income of year in question. Even prior to amendment to Explanation 1 after s. 234B(1) and to Explanation after s. 234B(1) and to explanation after s. 234C(1) by virtue of Finance Act, 2006 w.e.f. 1-4-2007, expression "such tax" as appearing in s. 140A, would have reference to tax payable on basis of return minus, inter alia, MAT credit claimed setoff in accordance with provisions of s. 115JAA and thus, said amendments were merely clarificatory and made explicit what was already implicit.	Jindal Exports Ltd.	(2009) 179 Taxman 391 314 ITR 137 (Delhi).
INTEREST – TDS	201(1), 201(1A)	Interest u/s. 201(1A) is compensatory measure for withholding the tax which ought to have gone to the exchequer, levy of interest is mandatory and absence of liability for tax will not dilute the default, as far as the period of default is concerned,	Elli Lilly & Company (India) (P) Ltd. & other	(2009) 21 DTR 74 178 Taxman 505 223 CTR 20.



		the period starts from the date of deductibility till the date of actual payment of tax. Date of payment by the concerned employee can be treated as the date of actual payment.		312 ITR (SC).
INTEREST – TDS – LIABILITY ON PAYEE	234B	When a duty is cast on the payer to deduct tax at source, on failure of the payer to do so, no interest can be imposed on the payee assessee u/s. 234B.	NGC Net Work Asia LLC.	(2009) 313 ITR 187 222 CTR 86 18 DTR 203 (Bom).
INTEREST – TDS CERTIFICATE	244A	Grant of interest u/s 244A cannot be denied on the ground that the TDS certificate was filed in the course of assessment proceedings and not along with return of income.	L & T Ltd.	ITA No. 4499/Mum/2008, dt. 22-7-2009 BCAJ p. 46, Vol. 41A, Part 6, September, 2009
INTEREST – WAIVER	201(A)	Interest u/s. 201(1A) not being penal in nature, the question of waiver of Interest on grounds such as reasonable cause, bonafide belief, unintentional are irrelevant.	G.M. Punjab Roadways	(2009) 178 Taxman 112 (Chandigarh) (SMC)
INTEREST- CASH SEZIED	158BFA	Cash seized in search to be taken as tax deposited for the purpose of levy of interest u/s. 158BFA.	Kwality Bar and Restaurant	(2009) 118 ITD 108 (Bang).
INTEREST INCOME	56	Interest income which accrued to the assessee during the pre-operative period on the funds kept with the bank which, were specifically earmarked for purchase of capital asset constitute capital receipt and could not be taxed under the head income from other source.	Indian Oil Panipat Power Consortium Ltd.	(2009) 181 Taxman 249 20 DTR 107 (Del)
INTEREST ON BORROWED CAPITAL	36(1)	Interest on funds borrowed for investment in land for business purposes is allowable business expenditure.	Sarnath Infrastructure (P) Ltd.	(2009) 120 TTJ 216 (Lucknow)
INTEREST ON BORROWED CAPITAL	36(1)(iii)	Interest on Capital borrowed for business of investment in shares has to be allowed as deduction.	Peninsular Investment Ltd.	(2009) 120 TTJ 96 (Hyd).
INTEREST ON BORROWED CAPITAL	36(1)(iii)	If there were funds available both interest free and overdraft and / or loans taken a presumption would arise that investment would be out of the interest free funds generated or available with the company, if the interest free funds were sufficient to meet the investments, presumption that the borrowed capital was used for purposes of business hence interest was deductible.	Reliance Utilities and Power Ltd.	(2009) 313 ITR 340 221 CTR 435. 178 Taxman 135.(Bom.)
INTEREST TAX – FINANCE LEASE	2(5B) & 2(7)	Transactions of assessee having already been held to be transactions in the nature of finance / loan transactions and such finding having attained finality. Interest earned by assessee from lease transactions is chargeable to interest tax.	Maruti Countrywide Auto Financial Services Ltd.	(2009) 18 DTR 23 29 SOT 58 (Del) (SB)(Trib).
INTEREST TAX - INTEREST ON BONDS AND DEBENTURES	2(5), 2(7)	Interest earned on bonds & debentures on bonds & debentures by way of investment can not be taxed under interest tax, 1974	Sahara India Savings & Investment Corpn. Ltd.	(2009) 32 DTR 57 (SC).
INTEREST TAX ACT	2(7)	Transaction of financing of motor vehicles by credit institution though termed as hire-purchase agreement, is a loan transaction and the finance charges recovered by the institution is held to be chargeable interest u/s. 2(7) of the Interest tax Act,	Kallur Chit Funds & Finance (P) Ltd.	(2009) 25 DTR 44 (Ker.)



		1974.		
INTEREST TAX ACT, 1974	4(2)	Interest earned on refinancing operations is not taxable interest under the Interest – tax Act, 1974.	HP State Industrial Development Corporation Ltd.	(2009) 17 DTR 26 (HP).
INTEREST TAX ACT, 1974 - VYAJ BADLA	2(7), 5	Essence of Vyaj Badla transaction is to provide finance for smooth carryover of the transactions on the settlement date in respect of persons who are in over bought or over-sold position and thus the income from Vyaj Badla transactions is interest from loan and is includible in chargeable interest.	Tulip Star Hotels Ltd.	(2009) 25 DTR 429 124 TTJ 173 (Del) (Trib).
INTEREST TAX, 1974 - CHARGEABLE INTEREST - HIRE PURCHASE – FINANCE	2(7)	Transaction of financing of motor vehicles by credit Institutions which are in the form of loan so called finance charges are liable to interest tax.	Kallur Chit Funds & Finance (P) Ltd.	(2009) 25 DTR 44 (Ker).
INTEREST WAIVER	234B, 234C	Assessee having paid tax voluntarily and having pleaded a good and reasonable reason for not filing the return on time and therefore interest u/s. 234B and 234C was liable to be waived.	V. Akilandeswari	(2009) 227 CTR 582 (Mad).
INTEREST- WAIVER OR REDUCTION	234A, 234B, 234C.	Assessee filing returns voluntarily and paying taxes due to his over busy schedule during the relevant assessment years constituted as 'unavoidable circumstances' within the meaning of cl. 2(e) of CBDT Notification No. 400/234/1995-IT(B) and entitle him for waiver of interest u/ss. 234A, 234B, 234C levied upon by him for failure to file returns within the time allowed u/s. 139(1)/(4).	S. Nagoor Babu @ Mano	(2009) 227 CTR 287 (Mad.)
INTEREST-BOOK PROFIT	115JA, 234B, 234C.	Interest u/ss. 234B, and 234C, is chargeable on income computed u/s. 115JA. Editorial :- See: Bombay High Court - Snowcem India Ltd. v DY CIT (2009) 221 CTR 594 (Bom).	Kanel Oil & Export Inds. Ltd.	(2009) 126 TTJ 158 (Ahd)(TM).
INTERNATIOANL TAXATION- TRANSFER PRICING –COMPUTATION OF ARM'S LENGTH PRICE	92C	While computing the arm's length price the assessing authorities cannot take only turnover of comparable companies, but ignore large number of other material factors such as function performed, assets employed risk taken (FAR) analysis etc. On the facts of the case the assessee has shown that out of 20 comparable cases only two companies were showing extraordinary profits as they had income from other sources other than business of development of software development. Therefore, additions confirmed by the CIT(A) was set aside.	E. Gain Communication (P) Ltd.	(2009) 118 ITD 243 (Pune)
INTERNATIONAL TAXATION – AGENT – ARMS LENGTH	9(1)	Foreign Co not liable to tax in India if Indian agent is paid on arms' length basis	BBC Worldwide	www.itatonline.org (2010) 35DTR 257 (Delhi)
INTERNATIONAL TAXATION - DOUBLE TAXATION AVOIDANCE AGREEMENT - INDIA – CANADA	90, ARTS. 18 & 23	Income of Indian cine artiste from entertainment show in Canada is taxable in Canada only in terms of Art. 18 of the DTAA between India and Canada.	Pooja Bhatt	(2009) 123 TTJ 404 (Mum.)



INTERNATIONAL TAXATION – DTA - INDIA AND FRANCE	44B, 90, ART. 9	Income earned by the assessee on account of transportation by ships operated by other enterprises under slot chartering arrangement is covered by art. 9 and is taxable only in the State of residence and accordingly, such income will be exempt from the Income-tax under the Income-tax Act.	CMA CGM SA France	(2009) 24 DTR 37 (Mum) (Trib).
INTERNATIONAL TAXATION – DTAA - INDIA – SINGAPORE	9(I)(vii), 195, 197, 201(1), 201(IA), art. 12	AO having issued certificate u/s. 197 for no deduction of tax at source, AO could not subsequently treat the assessee as an assessee in default u/s. 201.	Bovis Lend Lease (India) (P) Ltd.	(2010) 127 TTJ 25 (Bang)(UO)
INTERNATIONAL TAXATION – DTAA - INDIA – UK	90. Art. - 7, 13.	Work of to be undertaken by assessee included data collection measurement of dynamic properties of machines, providing training to engineers nominated by “T” Ltd. etc, it could be concluded that assessee did “make available” technical knowledge, experience, skill and know-how processes to ‘T’ Ltd. within the meaning of paragraphs (4) of article 13 of DTAA and therefore assessment passed by the authorities were confirmed. As regards the second project was concerned, since the role assessee was confined to merely providing independent evaluation of motorcycles prior to their launch and there was no provision for making available any technical knowledge, experience and skill etc. to ‘T’ Ltd., no addition can be made.	TVS Motor Co. Ltd.	(2010) 35 SOT 230 (Chennai)
INTERNATIONAL TAXATION – DTAA – INDIA - UNITED KINGDOM	9(1)(vi), Arts. 7(13)(6)	Amount received under license agreement for allowing use of software, not royalty but business profits. Receipts on account of maintenance charges and training fees incidental to software receipts is of same character.	Infrasoft Ltd.	(2010) 1 ITR 390 (Delhi) (Trib).
INTERNATIONAL TAXATION – DTAA - INDIA –BRAZIL	90, Article 8	Where assessee was neither owner nor lessee nor character of feeder vessels carrying cargo from Mumbai port to destination in Durban, profits attributable to such voyage would be outside scope of article 8 of DTAA.	Cia de Navegacao Norsul	(2009) 121 ITD 113 (Mum).
INTERNATIONAL TAXATION – DTAA - INDIA –SWEDEN - FEES FOR TECHNICAL SERVICES	90 Art. 3(3)	Management charges, whether relating to business management or technical management would be outside the scope of exemption under art. of DTAA. Management charges are not to be treated as commercial profits.	Swedish Telecoms International AB	(2009) 224 CTR 418 181 Taxman 148 24 DTR 233 (Bom.)
INTERNATIONAL TAXATION – FEE FOR INCLUDED SERVICES - TDS	9(1)(vii), 90, 195, 201(1)	Assessee company having entered into a contract with a US company ACSC only for procuring software personnel for the projects of another foreign company in USA, the primary services rendered by ACSC to the assessee under the contract is akin to recruitment and placement service rather than making available any technology, plan, design, etc. and, therefore, the payments made to ACSC cannot come within the	IIC Systems (P) Ltd.	(2010) 33 DTR 422 (Hyd)(Trib)



		purview of 'fee for included services' within the meaning of art. 12(4)(b) of Indo-US DTAA and the same are not chargeable to tax in India and no tax was deductible at source u/s. 195.		
INTERNATIONAL TAXATION - FEE FOR USE OF SATELLITE IS "ROYALTY" UNDER ACT & DTAA	9(1)	<p>(i) To constitute "royalty", it is not necessary that the process should be a "secret process", nor that that the instruments through which the "process" is carried on should be in the control or possession of the payer. The context and factual situation has to be kept in mind to determine that whether the process was "used" by the payer. The fact that the telecasting companies are enabled to telecast their programmes by uplinking and downlinking the same with the help of that process shows that they have "use" of the same. Time of telecast and the nature of programme, all depends upon the telecasting companies and, thus, they are using that process;</p> <p>(ii) The consideration paid by telecasting companies to satellite companies is for the purpose of providing "use of the process" and consequently assessable as "royalty" under the Act and the DTAA.</p>	New Skies Satellites N	119 ITD 333 (2009) 319 ITR 269 30 DTR 289 (Delhi) (SB).
INTERNATIONAL TAXATION – FEES FOR TECHNICAL SERVICES – DTAA - INDIA – FRANCE	9. Art. 13(4).	Expression 'fees for technical services' as appearing in provision of article 13(4) of DTAA between India and France as well as in Explanation 2 to s. 9(1)(vii) means payment made to any person in consideration of managerial, technical or consultancy services. Since test reports had been used by assessee in India in manufacturing of cars payment made to "U" company of France were chargeable to tax in India.	Maruti Udyog Ltd.	(2009) 34 SOT 480 (Delhi).
INTERNATIONAL TAXATION - FOREIGN COMPANY – ROYALTY – DTAA – INDIA – GERMANY	44D, 115JA, 90	Assessee being a person to whom DTAA applied had option being subjected to tax as per DTAA or Act, which was more beneficial to it, hence, it had rightly subjected it self to tax at reduced rate of 10 percent as per DTAA.	Chiron Behring GmbH & Co.	(2009) 118 ITD 324 17 DTR 131 (Mum)(Trib).
INTERNATIONAL TAXATION - FREIGHT INCOME – DTAA - INDIA – UK	9, 44	In view of article 9(1) of DTAA between India and UK, freight income earned by non-resident assessee on account of transportation of cargo in international traffic by ships operated by other enterprises under slot chartering, arrangement would be taxable only in State of residence and consequently, such income would be exempt from taxation under Indian Income tax law.	Balaji Shipping (UK) Ltd.	(2009) 121 ITD 61 (Mum).
INTERNATIONAL TAXATION - INDIA - AUSTRALIA – DTAA	90, Articles 7 & 12	Where non-resident is taxable under domestic law but there is a provision in treaty between India and country in which nonresident is incorporated to exempt transaction or reduce rigour of taxation to benefit of non -resident, provisions of treaty override provisions of domestic law.	Paradigm Geophysical Pty Ltd.	(2010) 122 ITD 155 1 ITR 178 (Delhi) (Trib)



INTERNATIONAL TAXATION – INDIA – SINGAPORE DTA	80HHC, 90, 263	A plain reading of s 80HHC shows that non-resident assessee is not all eligible for deduction u/s. 80HHC, exception under cl (4)(a) of art 26 of DTAA between India and Singapore clearly mandates that deduction u/s. 80HHC which provides for deduction to residents in India cannot be superceded by this non – discrimination clause of the DTAA. Revision by the commissioner was justified.	Mosraq Ahmed	(2009) 29 DTR 410 (Chennai)(Trib).
INTERNATIONAL TAXATION – LIAISON OFFICE – DTA - INDIA – SOUTH KOREA	9(I)(I) & 90, art. 5 & 7	Liaison office of the South Korean company being engaged in procuring purchase orders in India for the latter after negotiating the deal, there exists a business connection in India. Liaison office is also a PE, with in meaning of art 5 of the DTAA between India and South Korea as it is having freedom to fix the sale price and conclude the contract and therefore, its activities could not be of preparatory or auxiliary nature. Income attributable to the Liaison office is taxable under art 7 of the DTAA.	Jebon Corporation India Liaison Office	(2010) 127 TTJ 98 (Bang)
INTERNATIONAL TAXATION – OFFSHORE SUPPLY	9	Offshore supply of equipment is not liable to tax in India though it is a part of composite contract involving onshore service component.	Xelo Pty Ltd.	ITA Nos. 4107 & 4108/Mum/2002, A.Y. 1995-96 & 1997-98, Dt. 22-6-2009 BCAJ pg. 35, Vol. 41A, Part 5, August 2009
INTERNATIONAL TAXATION - PERMANENT ESTABLISHMENT - INDIA – MALAYSIA DTAA	40(a)(ia), 90, 195	Personnel supplied by Malaysian Company were supposed to function under direction, control and supervision of assessee ,therefore it could be said that there was no PE of Malaysian company in terms of Article 5 of DTAA, therefore payment received by said company was not taxable in India, consequently provisions of s. 195, and 40(a)(i) could not be invoked.	Stock Engineer & Contractors B.V.	(2010) 122 ITD 49 (Mum)
INTERNATIONAL TAXATION - PERMANENT ESTABLISHMENT - TECHNICAL SERVICES – DTAA - INDIA – USA	Art. 4, 12(4)(b), 5(c)	Non resident (Indian company) entering in to agreement with Defence Research Development Organisation to assist in identification of global technologies for existing defence related innovations. Lump sum paid by the applicant, activities of Institute of taxes University is not technical services, not taxable in India.	Federation of Indian Chambers of Commerce and Industry	(2010) 320 ITR 124 (AAR)
INTERNATIONAL TAXATION – PERMANENT ESTABLISHMENT- DOUBLE TAXATION AGREEMENT - INDIA AND MAURITIUS	90, 5 & 7	Minimum period for continuance of construction or installation project set out in cl. (i) of para 2 of art. 5 of India Mauritius DTAA has to be projected into para 1 for the purpose of determining whether there is a fixed place of business within the meaning of para 1; for counting the period of nine months duration under Article 5(2)(i) neither the date of signing the contract non the actual commencement of active phase of construction / installation is the starting point and can be counted from the preparatory stages leading to the actual commencement of the work such as gathering the	Cal Dive Marine Construction (Mauritius) Ltd.	(2009) 25 DTR 59 (AAR).



		equipment and arranging the infrastructure for carrying out the work such as gathering the equipment and for carrying out the work in full swing the applicant activities lasted for nine months and therefore it has no PE in India.		
INTERNATIONAL TAXATION – ROYALTY OR FEES FOR TECHNICAL SERVICES - DOUBLE TAXATION AGREEMENT – INDIA – UK	9(I)(vi), 9(1)(vii), 90 & 195 arts 12 & 13	Payment made by applicant to the UK company for providing international leg of the service in transmitting voice/data to places outside India using its international infrastructure and equipments is neither royalty nor fees for technical services: payment is in the nature of business profits and in the absence of PE of UK company in India, same is not taxable in India.	Cable & Wireless Networks India (P) Ltd.	(2009) 25 DTR 49 (AAR).
INTERNATIONAL TAXATION - TAXABILITY IN INDIA	9(1)(vii) EXPLN. 2	Underwriting commission paid to lead managers to issue of global depository receipts by Indian party, are business profits which are not taxable in absence of permanent establishment in India. Reimbursement of expenses no element of income hence not taxable.	Mahindra and Mahindra Ltd.	(2009) 313 ITR 263 (AT)(Mum.)(SB)
INTERNATIONAL TAXATION - TRANSFER PRICING	92C	For determination of ALP under TNMM assessee was justified in taking profit level indicator of comparable companies as operating cash profits without taking into consideration, exclusion of depreciation was justified to eliminate difference in technology used, age of assets used in production, differences in capacity utilization and different depreciation policies adopted by various companies.	Schefenacker Motherson Ltd.	(2009) 24 DTR 561 / 123 TTJ 509 (Del) (Trib).
INTERNATIONAL TAXATION – TRANSFER PRICING	92B(1)	Notional interest on interest-free loans can be assessed under transfer pricing law.	Perot Systems TSI	www.itatonline.org
INTERNATIONAL TAXATION – TRANSFER PRICING	92C	Assessee having determined ALP of its international transactions with AEs by applying CUP/cost plus method by offering the comparison of gross profit mark up margin on transactions with unrelated companies, TPO was not justified in rejecting the method adopted by assessee and making adjustments by applying TNMM on the ground that assessee incurred loss in transactions with AEs and that the method employed by assessee was complex.	Miss India (P) Ltd.	(2009) 123 TTJ 657 25 DTR 1 (Pune)(Trib).
INTERNATIONAL TAXATION - TRANSFER PRICING - STEPS TO BE TAKEN TO DETERMINE THE TNMM	92C	Method adopted by the AO suffered from various deficiencies and infirmities and lacked information and data comparables. Matter remanded to file of TPO for determination of arm's length price relating to transaction in question.	UCB India (P) Ltd.	(2009) 30 SOT 95 24 TTJ 289 121 ITD 131(Mum).
INTERNATIONAL TAXATION- TRANSFER PRICING - ARM'S LENGTH PRICE	92C(2)	Benefit of 5 percent disallowed on the ground difference between arm's length price determined and value of transaction declared exceeding 5 percent of arm's length price. International comparable was not accepted as relevant data required to make requisite adjustments difficult to obtain in relation to foreign comparable.	Global Vantage P. Ltd.	(2010) 1 ITR 326 (Delhi) (Trib)



INTERNATIONAL TAXATION- TRANSFER PRICING – CONSTITUTIONAL VALIDITY OF PROVISIONS	92, 92A	It was held that Chapter X dealing with Transfer Pricing was Constitutionally Valid. Article 14 of the Constitution applies even to a taxing statute, it does not prevent the legislature from making classification having intelligible differentia and nexus with the object of classification.	Coca Cola India Inc.	(2009) 309 ITR 194 (P&H)
INTERNATIONAL TAXATION- TRANSFER PRICING - OPPORTUNITY OF HEARING	92, 92CA, 92C	Provisions of sub-s. (3) of s. 92CA cast an obligation on TPO to afford a personal hearing to assessee before he proceeds to pass an order of determining of ALP in terms of said section whether assessee demands or not. TPO must refer the documents or materials available with the AO in relation to international transaction in issue.	Moser Baer India Ltd.	(2009) 176 Taxman 473 (Delhi)
INTERNATIONAL TRANSACTION - DTAA-INDIA AND SOUTH AFRICA	9	Commission being payable to South African Company for services rendered abroad and it having no fixed place or agent in India, no income could be taxed in India.	Spahi Projects (P) Ltd.	(2009) 26 DTR 303 (AAR).
INTERNATIONAL TRANSACTION - INCOME DEEMED TO ACCRUE OR ARISE IN INDIA – INCOME DEEMED TO ACCRUE OR ARISE IN INDIA – ROYALTY – DTAA - INDIA–USA	9(1)(vi) & 90.	Subscription fee received by applicant from the licensee (customer) for providing database containing financial and economic information of companies worldwide was not royalty within the meaning of s. 9(1)(vi), Explan. 2 or art 12 of DTAA between India and USA as no exclusive right or copyright was made over to customer and it did not amount imparting of information concerning the applicant's own knowledge, experience or skill in commercial and financial matters.	Factset Research Systems Inc	(2009) 25 DTR 146 (AAR).
INVESTIGATION - DUTY OF OFFICER - PASSENGER TRAVELLING BY AIR	119	Guidelines issued by CBDT dt. Nov. 18, 2009, to be followed by AIR Intelligence Units or Investigation Units dealing with air passengers with valuables at the airport of embarkation or destination ,to avoid any harassment and undue inconvenience to them, keeping confidential any premature disclosure to the media and dropping the passenger at the place he wanted to go etc.	Rajendran Chingaravelu	(2010) 320 ITR 1 (SC)
ISSUE MANAGEMENT EXPENSES – PRINCIPLE OF CONSISTENCY	37	The issue was of deduction of certain expenditure “issue management expenses” and the assessee succeeded only on the ground of consistency. Without going into the merits, the Supreme Court remitted back the matter to the High Court holding that the High Court should have examined the nature of the said expenditure.	Oswal Agro Mills Ltd.	(2009) 313 ITR 24 (SC)
JURISDICTION	127	Transfer of case without recording reasons and without giving an opportunity of hearing is bad in law and liable to be quashed.	Manohar Sweets	(2009) 177 Taxman 23 (MP).
LEAVE TRAVEL CONCESSION – NO EVIDENCE REQUIRED BY EMPLOYER	10(5)	Employer is not under any statutory obligation to collect evidence to show that employees have actually utilised the amount paid towards leave concession or conveyance allowance u/s. 10(5). There is no circular of the CBDT requiring the employer to collect and examine the evidence supporting the declaration of the employees for the	Larsen and Toubro Ltd & Anr.	(2009) 313 ITR 1 (SC)



		purpose of deduction of tax u/s. 192.		
LOSS – CARRY FORWARD – RETURN FILED	72	The assessee claimed a lesser amount of loss in its return filed. Subsequently, during the assessment proceeding before the AO claimed a higher amount of loss. The High Court held that the claim of the assessee of a higher loss was correct and allowed the assessee to carry forward and set off the same in subsequent years.	Nalwa Investments Ltd.	(2009) 19 DTR 235 (Del)
LOSS – CARRY FORWARD AND SET OFF – DEFECTIVE INVALID RETURN	80, 139(1), 139(3) & 292B	Assessee company having filed four returns in respect of its four units correctly disclosing all relevant information without causing any prejudice to Revenue, such mistake or defect stood removed by operation of s. 292B and consolidated revised return filed by assessee will relate back to the date of filing original returns entitling assessee to claim carry forward and set off of loss as claimed in original returns and consolidated in revised return.	Nichoas Appellate South East Asia Fund Ltd.	(2009) 20 DTR 1 121 TTJ 289 117 ITD 299 (Mum) (TM).
LOSS – SET OFF - LOSS ON SALE OF UNITS - TAX AVOIDANCE – TRANSACTION IN SECURITIES	70 & 94(7)	Conditions laid down in cls. (a) to (c) of Sub-s. (7) of s. 94 are cumulative; while the purchase of units of mutual funds by the assessee was within the statutory period of three months, the sale of said units was made beyond the statutory period of three months from the record date and therefore s. 94(7) was not attracted and loss could be disallowed.	Shambhu Mercantile Ltd.	(2009) 25 DTR 164 (Del).
LOSS – SPECULATION	73	Assessee's main business being earning of share brokerage from purchase and sale of shares on behalf of its customers, loss from purchase and sale of shares by assessee itself constituted speculative business and loss arising there from was speculative loss and could not be set off against income from brokerage by virtue of application of explanation s. 73.	Priyasha Meven Finance Ltd.	(2009) 22 DTR 473 119 ITD 163 (Mum.)
LOSS – SPECULATIVE – APPLICABILITY OF EXPLANATION TO S. 73.	73.	Explanation to S. 73 is not restricted only to the group of companies, and is applicable to all the companies which carry on business of purchase and sale of shares. Even shares-in-stock on valuation at the close of accounting year resulting in profit or loss, such profit & loss u/s. 28(1) is speculation profit or loss by virtue of Explanation to S. 73.	Prasad Agents (P) Ltd.	(2009) 213 Taxation 571 226 CTR 13 (Bom).
MANUFACTURE OR PRODUCTION - INVESTMENT DEPOSIT ACCOUNT	32AB, 80HH, 80I	Conversion of jumbo rolls of photographic films in to small flats and rolls in desired size amounts to manufacture or production eligible for deduction u/s. 32AB.	India Cine Agencies	(2008) 15 DTR 121 (SC) 220 CTR 223 (SC).
MANUFACTURE OR PRODUCTION – PROCESSING OF LAW MATERIAL	10B	Assessee having purchased raw material as well as semi finished goods and articles transformed them into artistic and marketable commodity which was completely distinct from the original item in character and use by carrying out the activities of smoothening, shaping, engraving, embossing, fixing metallic parts and accessories polishing and painting etc. can be said to have undertaken manufacture or production of articles and therefore, its income is eligible for exemption u/s. 10B.	Kwal Pro Exports	(2009) 25 DTR 113 123 TTJ 543 (Jd)(Trib).



MAT- BOOK PROFITS- COMPANY	115JB.	For the purpose of adjustment u/s. 115JB, ordinary business loss and statutory depreciation have been differentiated and either the amount of brought forward loss or unabsorbed depreciation, which ever is less is to be deducted and not both.	Costal Resorts (I) Ltd	(2009) 31 DTR 283 (Coch)(Trib).
MINERAL OILS	44BB	Catering charges reimbursed to the non-resident assessee is includible in the gross receipts u/s. 44BB, for calculating the deemed profit of ten per cent. This is because catering charges form part of 'services and facilities' in connection with extraction or production of mineral oil.	Ensco Maritime Ltd.	(2009) 181 Taxman 46 (Uttarakhand)
MINERAL OILS – BUSINESS	44BB	Mobilization / demobilization charges paid to non-resident assessee for transporting plant & machinery is to be included in the gross receipts u/s. 44BB for calculating the deemed profit of ten per cent, whether the same is paid for transporting within the territorial waters of India or from a place outside India.	R & B Falcon Drilling Co.	(2009) 181 Taxman 62 (Uttarakhand)
MINIMUM ALTERNATIVE TAX	115JAA	Minimum Alternative Tax (MAT) credit u/s. 115JAA should be given effect to before charging interest u/ss. 234B and 234C of the Act.	Chemplast Sanmar Ltd. & Ors.	(2009) 22 DTR 241 (Mad.)
MISTAKE APPARENT ON RECORD NON CONSIDERATION OF PROVISION OF ACT – ERROR APPARENT ON RECORD	154	It was held that the AO had not taken into consideration clause (v) of the Explanation to sub-s. (2) of s. 115JA of the Act. The assessee being industrial undertakings located in a backward state or district were entitled to 100 per cent, exemption in terms of s. 80IB and 80IA of the Act. The orders passed by the AO suffered from error apparent on the face of the record having been passed without considering the provisions of the Act.	Kushal Bagh Minerals P. Ltd.	(2009) 310 ITR 125 (Raj)
NEW INDUSTRIAL UNDERTAKING – FREE TRADE ZONE	10A	New Industrial Undertaking established by substantial investment in plant and machinery and manufacturing same article would not amount to splitting or reconstruction of the old unit and therefore, it would be entitled to the benefit u/s. 10A.	Servion Global Solutions Ltd.	(2009) 308 ITR 375 (AT) 116 ITD 133 (Chennai)
NON – RESIDENT - PERIOD OF STAY	6(1)(c)	While computing 60 days stay in India, first day in series of days to be excluded.	Manoj Kumar Reddy	(2009) 34 SOT 180 (Bang).
NON-RESIDENT – ASSESSMENT	9(1)(vii), 44BB, 44D & 115A	Services rendered by the assessee, a non-resident company to ONGC in connection with maintenance of four modules of soft ware for the purposes of exploration, extraction and production of mineral oils were technical services and therefore, the assessee is liable to pay tax @ 15% u/s. 44D r.w.s. 115A on the fee charged by it and not @ 10 % u/s. 44BB.	ONGC Ltd.	(2009) 223 CTR 318 (Uttarakhand)
NOTICE	282, 292BB	Notice was not served within stipulated time. Mere giving of dispatch number will not render the said finding to be perverse. In the absence of notice being served, the assessing officer had no jurisdiction to make assessment. Absence of notice can not be held to be curable u/s. 292BB of the	Cebon India Ltd	(2009) 184 Taxman 290 (Punj & Har)



		Income tax Act.		
NOTICE – ASSESSMENT DEEMED VALID IN CERTAIN CIRCUMSTANCES.	143(2), 292BB	S. 292BB inserted by the Finance Act, 2008, w.e.f. 1 st April, 2008 has no retrospective operation and applies to and from AY 2008-09 only, therefore, assessee could challenge the validity of block assessment in appellate proceedings on the ground of non issuance of notice u/s. 143(2) for the block period 1 st April 1988 to 25 th Jan., 1999. Provision of section 292BB have been inserted w.e.f 1.4.2008 , and therefore it is applicable from A.Y.2008-09 hence not retrospective.	Kuber Tobacco Products (P) Ltd.	(2009) 18 DTR 1 119 ITD 273 28 SOT 292 28 SOT 292 (Del)(SB)Trib).
NOTICE – ASSESSMENT	143(2), 292BB	S. 292BB makes no reference to any date before or after which the notice should have been issued or served to attract the applicability of that section and therefore, legal fiction created by s. 292BB would govern all cases irrespective of whether the notices were issued / served or after 1 st April 2008, and whether the assessee has participated in any proceedings or co-operated in any preceding or succeeding assessment year. Editorial Note:- Special Bench Delhi has taken contrary view. Kuber Tobacco Products (P) Ltd.	Varia Pratik Engineering	(2009) 17 DTR 1 120 TTJ 1 (Ahd).
NOTICE – PENDENCY OF ASSESSMENT PROCEEDINGS	148	Where the return was filed in response to notice u/s. 148 and the assessment is pending, the second notice u/s. 148 is invalid.	Tarsem Singh	(2009) 122 TTJ 861 (Asr.)
NOTICE – REASSESSMENT	143(2)	Held that an order of reassessment passed u/s 147 r.w.s. 143(3) without issue of a valid notice u/s 143(2) of the Act is null and void. The amendment to Sec. 148 by the Finance Act, 2006 does not save the reassessment done without issue of notice u/s 143(2). Further the provisions of s. 292BB are prospective and not retrospective.	Chandra R. Gandhi	ITA No. 6006/Mum/2007, Bench – K, AY. 2000–01, Dt. 23-12-2008 BCAJ pg. 793, Vol. 40-B, Part 6, March 2009.
NOTICE BY AFFIXTURE- REASSESSMENT	148, 292BB.	In the absence of anything to show that there was any urgency to serve the notice u/s. 148 on the very next day after it was issued or any material on record to show or suggest that any effort was made by the AO to serve the notice in the normal course before issuing the directions to serve the same by affixture was not valid service. S. 292BB inserted w.e.f. 1 st April 2008, has not retrospective operation, and therefore, it was no application for asst year 2001-02.	Arun Lal	(2009) 30 DTR 178 (Agra)(TM).
PENALTY – BLOCK ASSESSMENT	158BBFA(2)	Penalty u/s. 158BFA(2) is discretionary and not mandatory. Deletion penalty justified.	Dodsal Ltd.	(2009) 312 ITR 112 (Bom).
PENALTY – BLOCK ASSESSMENT	158BFA(2)	Levy of penalty is discretionary and not mandatory. As the undisclosed income represents the estimation of opening capital prior to the block period and the said capital cannot be treated as undisclosed income for the first assessment year in the block period, the Tribunal is right in deleting the penalty.	Satyendra Kumar Doshi	(2009) 222 CTR 258 18 DTR 236 (Raj).



PENALTY – BLOCK ASSESSMENT – ESTIMATE BASIS – VALIDITY	158BFA(2)	Additions having been made on estimate basis, penalty cannot be levied.	Hakeem S.A. Syed Sathar(dr).	(2009) 123 TTJ 573 (Chennai).
PENALTY - CONCEALMENT	271(1)(c)	The AO has made addition in assessment of items disclosed by assessee in assessment proceedings and also levied penalty. High court held that penalty is not leviable. The Apex court remanded the matter to High Court to decide the matter considering the latter judgment of Supreme Court <i>UOI v Rajasthan Spinning and Weaving Processors</i> (2008) 306 ITR 277 (SC) and <i>UOI v Dharmendra Textile Processors</i> (2008) 306 ITR 277 (SC).	Atul Mohan Bindal	(2009) 317 ITR 1 225 CTR 248 28 DTR 1 28 DTR 82 (SC)
PENALTY - CONCEALMENT	271(1)(c)	Payer having acknowledged payment, appeared before the AO, and led evidence, in support of services rendered to the assessee, there was no justification to term the assessee's explanation as false and there fore no penalty was leviable notwithstanding the claim for disallowance was confirmed in appeal by the Tribunal. Editorial - <i>UOI v Dharmendra Textile Processors & Ors.</i> (2008) 306 ITR 277 (SC), considered.	Dhirajlal Maganlal Shah	(2009) 32 DTR 69 (Ahd)(TM)(Trib).
PENALTY - CONCEALMENT	271(1)(c)	The judgment in <i>UOI vs. Dharmendra Textile Processors</i> has to be understood in the correct perspective. It does not make a radical change in the law nor does it affect the basic scheme of s. 271(1)(c). Even in <i>K P Madhusudan vs. CIT</i> 251 ITR 99, the assessee's plea to the effect that 'revenue was required to prove mens rea of a criminal offence' before penalty u/s 271(1)(c) can be imposed was rejected. Penalty u/s 271(1)(c) has been held to be 'civil liability' in contradistinction to prosecution u/s 276C. It is wrong to infer that because the liability is a "civil liability", it ceases to be penal in character. There is no contradiction in a liability being a civil liability and the same liability being a penal liability as well, though a civil liability cannot certainly be a criminal liability as well. As observed in <i>Om Prakash vs. UOI</i> AIR 1984 SC 1194 @ 1209 "A penalty imposed by the sales tax authorities is a civil liability, though penal in character.	Kanbay Software India Pvt. Ltd.	ITA No. 300/Pn/2007, dt. 20/4/2009 (2009) 31 SOT 153 121 TTJ 72 (Pune)
PENALTY – CONCEALMENT	271(1)(c)	Merely because the addition is confirmed does not ipso facto attract penalty provision. Penalty provision requires a strict adherence and onus to prove that there was a concealment of income with a view to avoid the tax, is on the department, penalty is not automatic. Editorial note - Judgment in <i>UOI V Dharmendra Textile Processors</i> (2008) 306 ITR 277, has been considered.	Gem Granites (Karnataka)	(2009) 18 DTR 358 (Chennai)(Trib).
PENALTY –	271(1)(c)	Where the assessee had disclosed the entire facts	Haryana Warehousing	(2009) 25 DTR 194



CONCEALMENT		and not concealed any particulars of his income a mere disallowance of a bona fide claim made by the assessee of deduction u/s. 10(29) of the Act does not amount to concealment so as to attract penalty u/s. 271(1)(c) the Act. Editorial- UOI v Darmendra Textile Processors & Ors (2008) 306 ITR 277 (SC) distinguished.	Corporation	(P&H)
PENALTY – CONCEALMENT	271(1)(c)	Concealment penalty u/s. 271(1)(c) levied on account of disallowance of genuine payments made to sister concern as excessive and unreasonable payments u/s. 40A(2). It was held that disallowance u/s. 40A(2) could not be considered as concealment of income or furnishing inaccurate particulars and hence the penalty was not warranted.	Jhavar Properties P. Ltd.	(2009) 317 ITR 278 (AT)(Mum).
PENALTY – CONCEALMENT	271(1)(c)	The Tribunal had held that penalty u/s. 271(1)(c) of the Act was not leviable because of a bona fide claim of deduction by the assessee u/s. 80HHC of the Act supported by the certificate of a Chartered Accountant. The Tribunal also noted that when the claim was preferred by the assessee there was a conflicting judicial opinion on the issue. On these undisputed facts recorded by the Tribunal and also by the CIT(A), the High Court declined to hold that the order of the Tribunals erroneous.	Lakhani India Ltd.	(2009) 17 DTR 304 (P&H)
PENALTY – CONCEALMENT	271(1)(c)	Assessee having offered an explanation as to why the impugned contract receipts could not be included in the relevant assessment year which is supported by an affidavit of his chartered accountant as well auditor's report in Form No. 3CD, CIT(A) and the Tribunal were justified in accepting the same and setting aside the penalty under s. 271(1)(c).	N. Nagaraj Ballal	(2010) 33 DTR 156 (Kar).
PENALTY – CONCEALMENT	271(1)(c)	The assessee has furnished all the relevant material which was neither in accurate nor has concealed any particulars of his income which is necessary for computation of total income. The AO did not find the explanation given by Assessee to be false in spite of this AO imposed penalty on Assessee. As AO has failed to point any exact failure of the Assessee for which penalty was levied u/s. 271(1)(c). As Assessee has furnished all the details and has given substantial evidence penalty cannot be levied by invoking explanation 1. Editorial Note:- UOI vs. Dharmendra Textile Processors & Ors. (2008) 219 CTR 489 (SC) discussed and distinguished.	Najma M. Kanchwala	(2009) 24 DTR 369 (Mum)(Trib).
PENALTY – CONCEALMENT	271(1)(c)	Where the assessee declared a higher income after receiving a notice u/s. 148 of the Act, disclosure made by the assessee was held to be not a voluntary surrender of income by the assessee and the penalty was rightly imposed by the AO.	Prempal Gandhi	(2009) 27 DTR 35 (P&H)
PENALTY – CONCEALMENT	271(1)(c)	Whether penalty is leviable on surrender of	Rajiv Garg & Ors.	(2009) 224 CTR 321



		additional income in return filed pursuant to notice u/s. 148. Held, No. The penalty u/s. 271(1)(c) of the act was not leviable as the Revenue has not placed any evidence on record to discharge the onus of proving concealment and also the Assessee has offered the additional income for tax in good faith to buy peace. Therefore, the penalty u/s. 271(1)(c) deserves to be deleted.		313 ITR 256 (2008) 175 Taxman 184 (P&H).
PENALTY – CONCEALMENT	271(1)(c)	Disclosure in Form No. 34 A, to Appropriate Authority for obtaining clearance certificate with respect to the agreement to sell cannot be equated to the disclosure in return and therefore, assessee was liable for penalty u/s. 271(1)(c) of the Act.	Ram Piari	(2009) 27 DTR 22 (P&H)
PENALTY – CONCEALMENT	271(1)(c)	If the assessee has not filed any return then there is no concealment and the penalty can not be levied u/s. 271(1)(c) for concealment.	T. Kodeeswaran	(2009) 123 TTJ 230 (Chennai)
PENALTY – CONCEALMENT	271(1)(c)	No penalty can be levied in a case where rental income is assessed under the head 'Income from house property' as against 'Income from Business'	Vazir Glass Works Ltd.	ITA No. 332/Mum/2007, Bench–F, A.Y. 2001-02, dt. 24-11-2008 BCAJ p. 671, Vol. 40-B, Part 5, February 2009.
PENALTY – CONCEALMENT – ADDITION DELETED	271(1)(c)	Where the addition was deleted by the Tribunal in quantum appeal, the very foundation for levy of the penalty ceased to exist.	VIP Industries	(2009) 122 TTJ 289 21 DTR 153 (Mum).
PENALTY – CONCEALMENT – BLOCK ASSESSMENT – NO POSITIVE CONCEALMENT FOUND ON ASSESSEE'S PART – NO PENALTY LEVIABLE ON ADDITION MADE ON ESTIMATE BASIS	158BFA	In the present case, the assessee applied a different net profit rate and the Assessing Officer and the CIT(A) adopted different estimates and therefore, it could not be said that the assessee had concealed the particulars of his income so as to attract penalty u/s. 158BFA(2).	Bitoli Devi	(2009) 31 SOT 30 (Luck) (URD)
PENALTY – CONCEALMENT - DEPRECIATION ON FABRICATED EVIDENCE	271(1)(c)	Assessee having claimed depreciation which was found to be based on fabricated invoice and assets having never been installed and used by the lessee and which claim was withdrawn after finding of false claim, it could not be said that assessee disclosed primary facts in a return bona fide and therefore penalty u/s. 271(1)(c) was validly levied.	TVS Finance & Services Ltd.	(2009) 30 DTR 81 126 TTJ 302 (Chennai) (TM).
PENALTY – CONCEALMENT- DISCLOSURE OF ADDITIONAL INCOME BY A LETTER	271(1)(c), Expln 5.	Authorised Officer having not recorded assessee's statement u/s. 132(4), during the course of search, the disclosure of additional income made by the assessee through a letter addressed to the Asst. Director of IT (Inv) immediately after conclusion of the search which has shown in the return of income, which has been accepted without any variation, has to be construed as a bona fide voluntary disclosure and therefore, penalty u/s.	Hissaria Brothers	(2009) 31 DTR 223 (Jd)(Trib).



		271(1)(c) is not leviable in view of Exln 5 .		
PENALTY – CONCEALMENT – FINDING IN ASSESSMENT	271(1)(c)	In penalty proceedings there has to be re-appraisal of material available at time of Assessment, as well as any additional material produced by assessee be examined, to ascertain the concealment or furnishing of inaccurate particulars. Levy of penalty merely relying upon finding in his assessment proceedings is not justified.	Vijay Power Generators Ltd.	(2009) 180 Taxman 102 (Delhi)
PENALTY – CONCEALMENT - NO PENALTY UNDER EXPL. 7 TO S. 271(1)(C) FOR BONA FIDE TRANSFER PRICING ADJUSTMENTS	271(1)(c)	<p>(i) The question whether the provision for bad debt in respect of sum owed by the parent company is a matter falling in the ordinary course of trade or whether it is an extraordinary item warranting exclusion from operational cost is a debatable point on which there can be two opinions. The fact that the assessee accepted the addition and did not challenge the same will not change this aspect;</p> <p>(ii) Penalty also cannot be imposed unless the party obliged either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest, or acted in conscious disregard of its obligation;</p> <p>(iii) The conduct of the assessee was not mala fide or contumacious. The computation claiming exclusion of the provision for doubtful debts in arriving at comparable profit margins cannot be said to have been done not in good faith or without due diligence. Accordingly penalty under Expl. 7 to s. 271(1)(c) could not be levied.</p>	Vertex Customer Services (India) Pvt. Ltd.	ITA No. 1506/Del/2008, Bench – C, A.Y. 2003-04, Date of Order - 21 st Sep. 2009 www.itatonline.org
PENALTY – CONCEALMENT – SATISFACTION	271(1)(c)	<p>Power to impose penalty u/s. 271(1)(c) depends upon satisfaction of AO in course of assessment proceedings and it cannot be exercised if he is not satisfied in Clause (a), (b) and (c) of sub-s. (1) of s. 271 before proceedings concluded. Such a satisfaction must be spelt out from order of AO as to concealment of income or deliberately furnishing of inaccurate particulars and in absence of a clear finding as to concealment of income or deliberately furnishing of inaccurate particulars, initiation of penalty proceeding u/s. 271(1)(c) would be without jurisdiction.</p> <p>Editorial:– See CIT vs. Indus Valley Promoters Ltd. (2008) 307 ITR 142 (Delhi)</p>	Rampur Engg. Co. Ltd.	(2009) 176 Taxman 211 221 CTR 32 (Del)(FB).
PENALTY – CONCEALMENT - SATISFACTION RECORDED BY AO FOR INITIATION OF PENALTY PROCEEDINGS	271(1)(c)	Department’s special leave petition against the judgment dt. 17-9-2007 of Delhi High Court in ITA No. 1596 of 2006, where by the High Court deleted the penalty imposed by the AO u/s. 271(1)(c) of the Income-tax Act on the ground that no satisfaction was recorded by the AO in the assessment order.	Surender Kumar Soni	C.C. No. 13514 of 2008 dt. 3-10-2008 (2008) 307 ITR 1 (St)(SC).
PENALTY – CONCEALMENT -	153A, 271(1)(c)	Additional income declared in returns filed in response to notice u/s. 153A, did not fall under category of return mentioned in Explanation 5(2) to	Kirti Dahyabhai Patel	(2009) 121 ITD 159 (Ahd)(TM).



SEARCH AND SEIZURE		s. 271(1)(c), assesses were not entitled to immunity from penalty.		
PENALTY – CONCEALMENT - SEARCH AND SEIZURE	158BFA(2)	Merely because the assessee has withdrawn the appeal against addition in quantum, in the absence of any discussion whatsoever in the penalty order to suggest any independent appraisal of additions or documents has been done in the penalty proceedings levy of penalty is liable to be deleted.	Nemchand Jain & Sons	(2010) 33 DTR 178 (Kol) (Trib)
PENALTY – CONCEALMENT - SURRENDER OF GIFT	271(1)(c) Expln 1	Assessee surrendering the amounts allegedly received as gifts from one S as they could not produce the donor since he had died before assessments were reopened but having filed confirmatory documents like memorandum of gift, affidavit of the donor, copy of return and balance sheet of the donor as well as the copy of ration card of the donor, assessee's explanation was bonafide and penalty u/s. 271(1)(c) could not be imposed by invoking Explanation 1 thereto.	Puneet Sehgal & Ors.	(2009) 123 TTJ 566 (Del).
PENALTY – CONCEALMENT - SURRENDER OF NRI GIFT	153A, 271(1)(c)	Voluntary offer of income in order to buy peace and avoid litigation before taking up assessment by the AO de hors any material with the AO cannot amount to concealment. Assessee having surrendered amount of NRI gift on a general query raised by AO. On the condition of not initiating penalty proceedings before assessment was taken up, AO could not have imposed penalty u/s. 271(1)(c), when there was no material with the AO to arrive at satisfaction about concealment. Editorial note- UOI v Dharmendra Textile Processors (2008) 306 ITR 977 (SC), considered.	Prem Chand Garg	(2009) 123 TTJ 433 31 SOT 97 (Del)(TM).
PENALTY – CONCEALMENT - TRANSFER PRICING ADJUSTMENT	92C, 271(1)(c)	The fact that the assessee had accepted the addition and not challenged the same would not change when the issue is debatable. When there is full disclosure by the assessee, and conduct being not mala fide or contumacious Penalty u/s. 271(1)(c), not justified.	Vertex Customer Services India (P) Ltd.	(2009) 34 SOT 532 (Delhi).
PENALTY – CONCEALMENT – WRONG CLAIM FOR NON ACCRUAL OF CAPITAL GAINS AND EXEMPTION	54, 271(1)(c)	Assessee had merely entered into an agreement for purchase of house within two years but no house was in fact purchased. Penalty was therefore leviable on that account. Further, capital gains had accrued to the assessee in respect of sale of another property. It was found that assessee had received full consideration, possession was also given and suit for specific performance against the assessee had also been rejected by the High Court. Neither the assessee disclosed the same while filing its original return nor disclosed in the return filed in response to notice u/s. 148. Therefore, it was held that it cannot be said that due to bona fide intention, the assessee had not disclosed the amount of capital gains. That apart, interest income earned on deposit on account of transfer of property was not disclosed and therefore penalty was imposable on that account also. Hence, penalty was rightly	Sharan Ramchandani	(2009) 27 DTR 57 (Mum)(Trib).



		levied.		
PENALTY – CONCEALMENT-LIMITATION	249(3), 271(1)(c)	AO having initiated penalty proceedings on 31 st January, 2003 order imposing penalty u/s. 271(1)(c) could have been passed within six months thereof or before 31 st March 2004, as per s. 275(1)(c), hence order passed by AO on 24 th March 2005 was barred by limitation as the quantum appeal was dismissed by CIT(A).	Naresh Kumar Gupta	(2009) 20 DTR 565 (Del)(Trib).
PENALTY – CONCEALMENT OF INCOME – NON FILING OF RETURN	271(1)(c)	It was held that penalty can be imposed for concealment for the non-filing of return by an assessee who had been assessed for several A.Y. prior to the A.Y. 1984-85.	U.P. State Handloom Corpn.	(2009) 310 ITR 54 (All).
PENALTY – FAILURE TO DEDUCT TAX AT SOURCE – INTEREST ACCRUING ON DEPOSITS	271C	The penalty imposed on the assessee, a non-banking company carrying on the business of mobilization of deposits, for non deduction of TDS on accrual basis of interest was dropped as it was held that the assessee was prohibited by reasonable cause for not deducting the TDS, when there was no default on the part of the assessee.	Sahara India Financial Corporation Ltd.	(2009) 30 SOT 149 (Delhi).
PENALTY – INITIATION	271E, 269T, 275(1)(c)	Penalty proceedings u/s. 271E need not be initiated during course of assessment proceedings.	Vinman Finance & Leasing Ltd.	(2008) 115 ITD 115 (VISK.)(TM).
PENALTY – LIMITATION	271B	Since the penalty order has been passed after the expiry of six months from the end of June, 2005, it was barred by the period of limitation. .	Motilal Vishwakarma HUF	ITA No. 055/Mum/2007, Bench–B, A.Y. 2003-04, dt. 27-08-2007 BCAJ p. 520, Vol. 40-B, Part 4, January 2009.
PENALTY – NON FILING OF AUDIT REPORT	271B 44AB	Where the assessee a co-operative society whose income was exempt u/s. 80P of the Act under a bonafide belief that as its income is exempt it was not required to get its accounts audited did not get its accounts audited within the time prescribed under the Act. On appeal the High Court held that as there was no intention on the part of the assessee to conceal its income or deprive the Government of revenue as the entire income was exempt u/s. 80P of the Act, as such the penalty u/s. 271B of the Act was not leviable in the assessee’s case.	Iqbalpur Co-operative Cane Development Union Ltd.	(2009) 23 DTR 60 179Taxman.27 (Uttarakhand).
PENALTY – NON PAYMENT OF INTEREST	221(1)	Penalty u/s. 221(1) can be imposed only for failure to pay tax and not for failure to pay interest u/ss. 234B & 234C.	Great Value Foods	(2009) 122 TTJ 682 178 Taxman 114 (Amritsar)
PENALTY – NOT LEVIABLE – GOOD AND SUFFICIENT REASON	271C	Penalty u/s. 271C can only be levied on a person who does not have a good and sufficient reason for not deduction tax at source. The burden will be on the person to prove such good and sufficient reason.	Eli Lilly and Co. (India) P. Ltd.	(2009)21 DTR 74. 178 Taxman 505. 223 CTR 20 312 ITR 225 (SC).
PENALTY – NOT LEVIABLE – PARTICULARS FURNISHED BY THE ASSESSEE – SIMPLE MISTAKE ON PART	271(1)(c)	If the assessee had a made a simple mistake while claiming deduction u/s. 80-IA and thereafter filed a revised return, the same could not be a case of furnishing inaccurate particulars of income or concealment attracting the levy of penalty under S.	Niton Valve Industries (P) Ltd.	(2009) 30 SOT 236 (Mum.)



OF ASSESSEE		271(1)(c) of the Act.		
PENALTY – SET ASIDE	271(1)(c)	A mere omission or negligence by the assessee cannot be treated as false and inaccurate. Accordingly the penalty was deleted.	Nera (India) Limited	ITA No. 107/Del./2009 Source: BCAJ
PENALTY – SET ASIDE	271(1)(c), 271 (1B)	Assessment order having been made after 1 st April, 1989 they are covered by the newly inserted sub s. (1B) of S. 271. Impugned order passed by the tribunal is set aside and the appeals are remitted to the tribunal for hearing on merits.	India Crafts & Ors.	(2009) 226 CTR 308 (Del)
PENALTY - TAX AUDIT - REASONABLE CAUSE- LEGAL OPINION	44AB, 271B	Legal opinion contained in tax audit Manual published by the Bombay Chartered Accountants Society constituted reasonable cause for the bona fide belief of the assessee that its interest receipts i.e. gross receipts, and not loan advanced i.e. turnover being less than 40 lakhs the provisions of s. 44AB are not applicable in its case and therefore, penalty u/s. 271B is not leviable.	Sachinam Trust	(2009) 21 DTR 1 (Guj).
PENALTY – TDS- REASONABLE CAUSE	271C	Assesses were under genuine and bona fide belief that there was no obligation to deduct tax at source from the home salary paid by the foreign company / head office, consequently, penalty u/s. 271C is not leviable in any case.	Elli Lilly & Company (India) (P) Ltd. & Other	(2009) 21 DTR 74 178 Taxman 505 223 CTR 20 312 CTR 20(SC).
PENALTY – U/S 11AC OF EXCISE ACT – CONCEALMENT RATIO OF – DHARMENDRA TEXTILES EXPLAINED	271(1)(c)	Decision in UOI vs. Dharmendra Textile Processors (2008) 306 ITR 977 (SC), cannot be said to hold that 11AC would apply to every case of non payment or short payment of duty regardless of the conditions expressly mentioned in the section for its application. If the notice u/s. 11A(1) states that the escaped duty was the result of any conscious and deliberate wrong doing and in the order passed u/s. 11A(2) there is a legally tenable finding to that effect then the provision of s. 11AC would also attracted. Editorial Note: Refer ACIT vs. VIP Industries Ltd. (2009) 21 DTR 153 (Mum.) (Trib.) / Kanbay Software India Pvt. Ltd. vs. Dy. CIT (2009) 122 TTJ 721 (Pune), www.itatonline.org / M/s. Jyothy Laboratories Ltd. vs. DCIT, ITA No. 5947/M/05 Bench ‘E’ dt. 22-1-09 / M/s. Nayma M. Kanchwala vs. ITO, ITA No. 7371/M/05 Bench ‘D’ dt. 11-2-09./ ITO vs. GACL Finance Ltd., ITA No.6528/M/05, Bench ‘B’ dt.19-03-2009	Rajasthan Spinning & Weaving Mills	(2009) 23 DTR 158 (SC) 229 CTR 1 (SC).
PENALTY- CONCEALMENT	271(1)(c)	A patently wrong claim of deduction attracted penalty u/s. 271(1)(c), Explanation 1. In cases of falling under Explanation 1 to s. 271(1)(c), where AO does not have to prove the explanation of assessee to be false or establish the malafide on the part of assessee in making such wrong and patently impermissible claim, the amount disallowed is deemed to represent income in respect of which particulars have been concealed. Editorial note- UOI v Dharmendra Textiles	Supreme Industries Ltd.	(2009) 21 DTR 97 (Mum)(Trib).



		Processors (2008) 306 ITR 977 (SC). Applied Gem Granite Karnataka vs. Dy. CIT (2009) 18 DTR (Chennai) (Trib.) ACIT vs. M/s. VIP Industries Ltd. (2009) 21 DTR (MUM) TRIB) 53 / (2009) 30 SOT 254 (Mum).		
PENALTY - CONCEALMENT	271(1)(c)	In order for the deeming provision of Explanation 1 to s. 271(1)(c) to apply it must be show either that (a) the assessee fails to offer an explanation, or (b) he offers an explanation which is found to be false, or (c) he offers an explanation which cannot be substantiated or shown to be bona fide. On facts, the claim of deduction on a motor car used for research staff cannot be said to be not bona fide. The judgment of the Supreme Court in Dharmendra Textiles Processors which holds that penalty u/s. 271(1)(c) is a civil liability and that “willful concealment” and “mens rea” are not essential ingredients for imposing penalty cannot be read to mean that in all cases where addition is confirmed, penalty shall mechanically follow. In order to attract s. 271(1)(c), there must be “concealment” – the fact that the same is willful or unintentional is irrelevant. Where an assessee genuinely claims a deduction after disclosing necessary facts, there is no “concealment” even if the claim is rejected. If penalty is imposed under such circumstances also there will remain no course open to an assessee to raise disputed claims and such proposition is beyond recognized canons of law	VIP Industries Ltd.	(2009) 122 TTJ 289 21 DTR 153 (Mum) (Trib).
PENALTY – CONCEALMENT – BLOCK ASSESSMENT	158BFA(2)	Amount of undisclosed income shown in the return of income in form No. 2B could not be taken in to account for computation of penalty u/s. 158BFA(2). There is nothing in the language to incorporate the requirement of payment of tax on the “undisclosed income” as a condition for application of second proviso.	Heera Constructions Co. (P) Ltd.	(2009) 29 DTR 398 (Coch)(TM)(Trib).
PENALTY CONCEALMENT - INCOME ASSESSED ON ESTIMATE BASIS	271(1)(c)	Apex Court dismissed the special leave petition of the department against the order of Punjab and Haryana High Court in ITA No. 470 of 2007 (2008) 303 ITR 53, where by the High Court dismissed the from the order of Tribunal canceling the penalty following 254 ITR 191 and 158 ITR 85 in which the Court had held that provisions of s. 271(1)(c) are not attracted when the income of the assessee is assessed on estimate basis and additions are made thereon. Refer: Sangrur Vanaspati Mills Ltd. vs. ACIT (2009) 179 Taxman 27 (Chandigarh)	Sangrur Vanaspati Mills Ltd.	(2009) 308 ITR 18 (St)(SC).
PENALTY CONCEALMENT - SATISFACTION OF THE AO	271(1B), 274, 275	(i) S. 271(1B) is not violative of article 14 of the Constitution. (ii) The position of law both, pre and post amendment is similar, as regards initiation of	Madhushree Gupta	(2009) 183 Taxman 100 26 DTR 217 (Delhi).



		<p>penalty proceedings.</p> <p>(iii) Prima facie satisfaction of the AO is a must.</p> <p>(iv) Satisfaction need not be in respect of each and every disallowances.</p> <p>(v) Due compliance would be required to be made in respect of the provisions of ss. 274 and 275 of the Act.</p> <p>(vi) The proceedings for initiation of penalty can not be set a side only on the ground that the assessment order states that “penalty proceedings are initiated separately” if otherwise it conforms to the parameters.</p>		
PERQUISITE - PICK-UP AND DROP FACILITIES TO EMPLOYEES	17(2), 10(14)	Pick-up and drop facility to employees between the specified points is not a perquisite.	WNS Global Services (P) Ltd.	(2009) 33 SOT 445 (Mum).
PLANT – ROAD - DEPRECIATION	32(1)(ii), 43(3)	Road is not plant but after asst year 1988-89 is included in the category of building for depreciation as such.	Tamil Nadu Road Development Company Ltd.	(2009) 24 DTR 618 123 TTJ 702 (Chennai).
POWER OF INCOME TAX AUTHORITIES – IMPOUNDING OF BOOKS ETC.	131	S. 131 of the Act provides that any books, documents, etc impounded by the AO can be retained beyond fifteen days only with the prior approval of superior authorities. This power of extending retention period of books, documents, etc indefinitely or during the pendency of appeal would defeat the very object of impounding with an outer limit of fifteen days. Thus the extension of such retention period can only be a one time exercise and supplementing the outer limit of fifteen days for some more days depending upon the circumstances of a case. The extension of the period should be counted only in days and not in months or years as outer limit is indicated in days.	Subha & Prabha Builders (P) Ltd.	(2009) 26 DTR 197 (Karn).
PRACTICE OF LAW- RIGHT TO PRACTISE LAW -ELIGIBILITY – FOREIGN LAW FIRMS – RBI ACT, FERA ACT	29.	Foreign Law Firms are not eligible to open liaison offices or to practice law in India. Even giving an opinion on a legal matter amounts to “practise of law”. Non-Advocates cannot practise law.	Lawyers Collective	www.itatonline.org
PRECEDENT - APPEAL (TRIBUNAL) - SPECIAL BENCH	254(1)	Special Bench decision has to be followed notwithstanding the fact that decision of Division Bench is a conscious decision not to follow the Special Bench (larger bench) decision after noticing that decision.	Miss India (P) Ltd.	(2009) 123 TTJ 657 25 DTR 1 (Pune) (Trib).
PRECEDENT – BINDING NATURE	254	Tribunal is duty bound to follow the decision of a High Court, if there is no contrary decision available from any other High Court.	Maharashtra State Warehousing Corp. Ltd.	(2009) 122 TTJ 865 22 DTR 531 (Pune)



PRECEDENT – BINDING NATURE	3	Decision of High Court of different jurisdiction is not binding on Tribunal.	Visvas Promoters (P) Ltd.	(2009) 30 DTR 65 226 CTR 638 (Mad).
PRECEDENT - DECISION OF HIGH COURT - SPECIAL BENCH.	3	Solitary judgment of any High court in the country on a particular point or issue should be followed in its letter and spirit by all Benches of the Tribunal, unless there are strong reasons to deviate from the view expressed by the High Court. Otherwise, the hierarchical judicial system would collapse.	Ranisati Fabric Mills P. Ltd.	(2009) 309 ITR 117 118 ITD 293 (AT) (Mumbai).
PRECEDENT - DECISION OF JURISDICTIONAL HIGH COURT	254(1)	Tribunal has no power to hold decision of jurisdictional High court as per incuriam or sub silentio.	Sreeja Hosieries	(2009) 33 SOT 29 22 DTR 465 22 TTJ 849 (Chennai)
PRECEDENT - DISMISSAL OF SPECIAL LEAVE AND APPEAL	ART. 136, 141	Dismissal of appeal means that the judgment of appealed order has been affirmed.	Snowcem India Ltd.	(2009) 313 ITR 170 221 CTR 594 18 DTR 58
PRECEDENT - HIGH COURT	254	Tribunal is not bound by decisions of Courts other than jurisdictional High Court.	Mahindra and Mahindra Ltd.	(2009) 313 ITR 263 (AT)(Mum.)(SB).
PRECEDENT - HIGH COURT	254	A solitary judgment of any High Court in country on a particular point or issue should be followed in its letter and spirit by all Benches of Tribunal notwithstanding contrary views expressed by some Benches of Tribunal notwithstanding contrary views expressed by some Benches of Tribunal, unless there is strong reason to deviate from view expressed by High Court.	Ranisati Fabric Mills (P) Ltd.	(2009) 118 ITD 293 (Mum.)
PRECEDENT – TRIBUNAL	254(1).	Tribunal can not take different view from the view taken by the coordinate bench in respect of the same assessee for another year.	DLF Universal Ltd.	(2008) 306 ITR 271 (Delhi).
PRECEDENT- TRIBUNAL	254(1)	Judicial propriety demand that a Bench of the Tribunal must follow the judgment of a co-ordinate Bench, Judicial Member was not justified in taking a different view than one taken in an earlier case by a Co-ordinate Bench on identical facts.	The Society of Presentation Sisters	(2009) 30 DTR 1 (Coch) (TM) (Trib).
PRESUMPTIVE TAXATION – CIVIL CONSTRUCTION BUSINESS	44AD	Held, that provisions of S. 44AD can not be invoked to apply 8% rate of Net Profit, when the Turnover of Assessee company was more than Rs. 40 lacs, and proper books of account were maintained and duly audited.	Allied Engineers	(2009) 180 Taxman 70 (Delhi)
PROSECUTION	276CC & 278B	Where the delay in filing the return was explained by the accused firm due to the illness of the old part – time accountant of the accused firm, the cause shown by the accused firm was held to be a reasonable cause for delay in filing the return of its income.	Bhavecha Machinery & Ors.	(2009) 17 DTR 387 (MP)
PROSECUTION – PARTNERS OF FIRM	278B	Complaints for offences u/ss. 276C, 277 and 278B was filed against the firm and all the partners. In absence of any specific allegation against the	Onkar Chand & Co. & Ors.	(2009) 22 DTR 57 (HP)



		partners of the firm other than those who had verified the return of the firm that they were responsible for the conduct of the business of the firm, prosecution against these partners was held to be not sustainable.		
PURCHASE OF IMMOVABLE PROPERTY	269UD	For purchase of immovable property by Central Government the conditions precedent is that notice must give details which lead to interference of undervaluation. As there was no finding of undervaluation for evasion of tax, order of pre-emptive purchase held not valid.	Amarjit Thapar	(SLP No CC. 8872 Rejected on 14 th July, 2008) (2008) 175 Taxman 48 (MG). (Bom)
REASSESSMENT	143(2)	Proceedings u/s. 147 could not be held to be vitiated merely because the AO had right to proceed u/s. 143(2).	Shakuntala Devi	(2009) 227 CTR 618 (P&H).
REASSESSMENT- REOPENING - EVEN BLOCK ASSESSMENTS CAN BE REOPENED U/S 147/148	147, 148 & 158BC	Provisions of s. 147/148 will apply to an assessment for a block period made under Chapter XI B. Note (i) The ITAT Bombay Bench has taken the view in Western India Bakers 87 ITD 607 that a block assessment cannot be reopened u/ss 147 & 148. (ii) Suresh Gupta 297 ITR 322 (SC) has been doubted and referred to a larger Bench in Vatika Township 314 ITR 338 (SC).	Peerchand Ratanlal Baid (HUF)	(2009) 24 DTR 209 (Gau).
REASSESSMENT – ‘REASONS TO BELIEVE’	147	Re-opening is not permissible on borrowed satisfaction of another AO	Shree Rajasthan Syntex Ltd.	(2009) 212 Taxation 275 (Raj).
REASSESSMENT - AFTER FOUR YEARS - SUPREME COURT JUDGEMENT	147	Assessee having disclosed all the primary facts before the AO at the stage of original assessment, reopening of assessment after expiry of four years from the end of relevant year merely on the basis of a subsequent decision of the supreme court was not valid. Editorial: Full Bench of Delhi High Court in CIT v Kelvinator of India Ltd. (2002) 256 ITR 1 (Delhi) affirmed.	Prestige Foods Ltd.	(2009) 32 DTR 283 (Ind)
REASSESSMENT – BLOCK ASSESSMENT	147	Re-opening of assessment of a particular assessment year which was included in the block period - Block assessment held to be invalid being barred by limitation. Merely because block assessment is time barred, the Department cannot have ‘reasons to believe’ that income has escaped assessment. And assessment for a particular year cannot be re-opened on that ground.	Mira Ananta Naik	(2009) 183 Taxman 40 (Bom.)
REASSESSMENT - CHANGE OF OPINION	147, 148	Where the original assessment is framed u/s. 143(3), and subsequently, it comes to the notice of AO, that still some income chargeable to tax has escaped assessment, he can get assistance of provisions of s. 147, provided it does not amount to change of opinion.	M.P. Ramachandran	(2009) 32 SOT 592 (Mum).



REASSESSMENT – CHANGE OF OPINION – WITHIN 4 YEARS		Where the assessee has disclosed material facts, merely from the perusal of the records available the AO is not empowered to reopen the assessment completed u/s. 143(3) though within four years as this amounts to mere change of opinion. Reopening was not therefore sustainable.	Glaxo Smith Kline Pharmaceuticals Ltd.	(2009) 27 DTR 124 (Mum)(Trib).
REASSESSMENT – DIRECTION – LIMITATION	148, 150(1)	One of the Directors of the assessee company filed an appeal against the Block Assessment whereupon certain additions / disallowance were made by the AO. The same were deleted by the CIT(A), on the condition that the same has to be considered in the hands of the assessee company. These were investments made in the names of the shareholders. In pursuance of these directions, notices u/s. 148 were issued to reopen assessment proceedings. The assessee company objected to the validity of initiation of the proceedings inter alia on the ground of limitation. The said objection were rejected inter alia, on the ground that as per provisions of s. 150(1) of the Act, the reopening proceedings had been validly initiated to give effect to the CIT(A)'s Order. The assessee company filed Writ Petitions by contending that the observations of CIT(A) could not be treated as directions. High Court dismissed the said Writ Petitions by holding the provisions of s. 150(1) would clearly cover the case against the assessee company and it was open to the authorities to reopen the concluded assessment proceedings.	Maurya Realtors P. Ltd.	(2009) 315 ITR 393 (Patna)
REASSESSMENT - FULL AND TRUE DISCLOSURE IN THE BALANCE SHEET - NOTICE AFTER EXPIRY OF FOUR YEARS	147, 148	Specific case of Revenue being that good will is not an intangible asset eligible for depreciation, reopening of assessment after expiry of four years on the ground that assessee had failed to disclose the nature of good will resulting in failure to disclose the nature of good will resulting in failure to disclose fully and truly all material facts can not be sustained, more so when the notes and schedule attached to the balance sheet clearly showed that all facts relating to claim of depreciation on good will had been fully disclosed by the assessee.	Supreme Treves (P) Ltd.	(2009) 23 DTR 215 (Bom.)
REASSESSMENT – INFRASTRUCTURE UNDERTAKING	147 r.w.s. 80-IA	Assessee an industrial undertaking set up in AY 1997-98 claimed deduction u/s 80-IA, and which was duly allowed as per Order u/s 143(3). Subsequent assessments of A.Y. 1998-99 to A.Y. 2001-02 were also passed u/s 143(3) or 143(1)(a). Reassessment proceedings initiated thereafter for A.Y. 1998-99 to 2000-01, on ground that product of menthol oil is not manufacture for purpose of s. 80-IA. In absence of fresh facts or change in law, merely based on whims and fancies reopening was held to be without jurisdiction and unsustainable as same was not backed by any higher judicial opinion or otherwise.	Essential Motto	(2009) 183 Taxman 148 (Chandigarh)
REASSESSMENT – INTEREST TAX	10	Reopening of assessment to tax interest on accrual	HP State Industrial	(2009) 17 DTR 26 (HP)



		basis instead of receipt basis was held to be invalid. Further the High Court held that the order passed by the CIT(A) in another assessee's case cannot be a reason to reopen the assessment of the assessee.	Development Corporation Ltd.	
REASSESSMENT – MATERIAL FACTS	147	Reopening u/s. 147 not valid if there is no finding regarding failure to disclose material facts.	Bhavesh Developers	Source : www.itatonline.org
REASSESSMENT – NOTICE	143(2), 147, 148, 292BB	Reassessment made in the absence of service of notice u/s. 143(2) is invalid. Neither amended s. 148 nor s. 292BB were applicable on the facts of the case.	Chandra R. Gandhi	(2009) 18 DTR 165 120 TTJ 786 (Mumbai).
REASSESSMENT – NOTICE	147, 148	Points not decided while passing assessment Order u/s. 143(3) not a case of change of opinion – Assessment reopened validly.	Yuvraj	(2009) 315 ITR 84 (Bom).
REASSESSMENT – OPPORTUNITY TO CROSS EXAMINE	148	There was reassessment on basis of statements made by certain individuals. Assessee was not given opportunity to cross examine those individuals. It was held that proceedings were valid up to the point of time of recording statements, and the proceedings after recording statements of individuals were set aside.	Sanjeev Kumar Jain	(2009) 310 ITR 178 (P&H)
REASSESSMENT - PRIMARY OBJECTION	148	Reassessment framed by the AO without disposing of the primary objection raised by the assessee to the issue of reassessment notice issued by him was liable to be quashed.	MCM Exports	(2009) 23 DTR 356 (Guj).
REASSESSMENT - PROVISO TO S. 14A INSERTED W.E.F 11-5-2001 – NOT VALID – CASES PRIOR TO ASSESSMENT YEAR ON OR BEFORE 1-4-2001	14A	It has been held that the AO, in view of the statutory embargo placed on his jurisdiction by virtue of the proviso to S.14A of the Act, to make reassessment, in respect of specified assessment years has acted without jurisdiction in re-opening the assessments for the A.Y. 1998-1999 to bring to tax income described under substantive provisions of s.14A.	Bombay Dyeing Mfg. Co. Ltd.	(2009) 30 SOT 461 (Mum).
REASSESSMENT – REASON TO BELIEVE	147, Explan. 2 to S. 147, & 148	On the basis of definite information that a certain bank account in then bank in the name of the assessee was used to provide accommodation entries, the AO had a prime facie belief that assessee's income had escaped assessment and therefore reopening as sustainable.	Rishi Grover	(2010) 33 DTR 309 (Asr) (Trib)
REASSESSMENT - RECORDING REASONS - ISSUING NOTICE	147, 148	AO recording reasons for assessment and AO issuing notice u/s. 148 must be the same person. Successor AO cannot issue notice u/s. 148 on the basis of reasons recorded by predecessor AO. Notice issued invalid and deserves to be quashed.	Hyoup Food and Oil Industries Ltd.	(2008) 307 ITR 115 (Guj.)
REASSESSMENT – S. 148	148	Reassessment completed by an AO on the basis of notice u/s. 148 issued by another AO, who had no jurisdiction over the assessee held to be invalid. Reassessment is also held to be invalid for the reason that the jurisdiction over the assessee's case was not transferred by any order passed u/s. 127 by any competent authority to the AO who has passed	Krishan Kumar Gupta	(2008) 16 DTR 1 (Del.)(Trib.)



		the order.		
REASSESSMENT – SERVICE OF NOTICE	148	Service of notice u/s. 148 of the Act upon the assessee is the precondition for framing assessment u/s. 147 of the Act. Thus, where the notice was not served upon the assessee for reassessment for the year 2001–02 the reassessment framed u/s. 147 of the Act was held to be bad in law. The court further held that the provisions of s. 292BB of the Act cannot be invoked by the revenue in the assessee's case as the provisions were introduced from 1-4-2008 which were not applicable to assessment year under consideration.	Mani Kakar	(2009) 18 DTR 145 (Del)
REASSESSMENT – SERVICE OF NOTICE	148 r.w.s. 143(2)	On the facts and circumstances, the Reassessment was held to be invalid as no Notice u/s. 143(2) was issued.	R.K. Gupta	(2009) 308 ITR 49 (AT)(Del).
REASSESSMENT – VALIDITY	142(1), 143(3).	Notices issued u/ss. 142(1) and 143(3), without disposing of the objections raised in response to the reasons recorded, held to be invalid.	Premier Ltd.	W.P. No. 2340 of 2008 dt. 22-10-2008 (Bom). (Unreported)
REASSESSMENT – VALIDITY	143(2), 147, 148	Period for issue of notice u/s. 143(2), not expired, reassessment held to be invalid.	Qatalys Software Technologies Ltd.	(2009) 308 ITR 249 (Mad.)
REASSESSMENT – VALIDITY	148	In the absence of no new material brought in by the Assessing Officer, recourse to reassessment proceeding becomes invalid for it being a clear case of change of opinion – The Assessee had claimed deduction u/s. 80-O which was allowed by the Assessing Officer after examine the entire particulars. As Assessee has not suppressed any material, the re-opening is bad-in-law.	Chakiat Agencies (P) Ltd.	(2009) 224 CTR 286 (Mad.)
REASSESSMENT-CHANGE OF OPINION – NOT AGROUND FOR REASSESSMENT	147, 148	AO deemed to have applied his mind if facts are on record and reopening u/s 147 on change of opinion is not permissible even within 4 years.	Kelvinator of India	www.itatonline.org (2010) 34 DTR 49 (SC).
REASSESSMENT-NOTICE – SERVICE – APPROVAL	147, 148, Civil procedure code O 5 R 20	The notice was served only by affixture without attempting to serve notice on the assessee and there was neither any noting in the record by the Assessing officer that the assessee had refused to accept the notice through affixture. The AO has not served the notice on the assessee in compliance with the provisions of Order 5 rule 20 of the Code of Civil Procedure 1908, hence reassessment is bad in law. On the facts the notice was issued in March 2003 and approval was obtained in October 2003.	K.C. Singhanian	(2010) ITR 205 (Trib)
REASSESSMENT-SANCTION OF COMMISSIONER	148, 151	Sanction of Commissioner to notice issued u/s. 148 is a must for reopening assessment after four years.	M.P.Export Corpon Ltd.	(2009) 120 ITD 460 (Indore)
REASSESSMENT-CHANGE OF	148	Where the assessment order does not contain any discussion on a particular issue, the same may be rendered without application of mind, and in that	Ema India Ltd.	(2009) 30 DTR 82 (All).



OPINION		case, there is no question of change of opinion, in such cases mere production of books of account is also no sufficient as per s. 147, Explanation 1 and therefore reopening would be valid.		
RECOVERY – CIVIL	281	Where the Department desires to declare the transaction entered into by the assessee in default as void under the provisions of s. 281(1) of the Act, the department being in the position of a creditor has to file a civil suit for a declaration that the transfer is void.	Ryan Plast	(2009) 19 DTR 285 (Bom)
RECOVERY – STAY – HIGH-PITCHED ASSESSMENT	220(6)	Assessment at a figure 350 times the returned income is unreasonably high pitched, hence, recovery needs to be stayed in view of CBDT instruction No. 96 dt. 21 st Aug., 1969.	Taneja Developers & Infrastructures Ltd.	(2009) 222 CTR 521 (Del.)
RECOVERY OF TAX – PENAL INTEREST – WAIVER OF INTEREST	220(2A)	Discretion to waive interest should be exercised judicially. The order should give reasons and rejection of application for waiver without giving reasons is held to be not valid.	Mani	(2010) 320 ITR 472 (Mad)
RECTIFICATION OF MISTAKE-SEARCH AND SEIZURE – BLOCK ASSESSMENT - SURCHARGE – RECTIFICATION – RETROSPECTIVE OPERATION OF LAW	113 154	Levy of surcharge debatable when AO passed the order. Rectification is not permissible. After referring Supreme Court Suresh N. Gupta (2008) 297 ITR 322.	M.S. Agrawal	(2009) 308 ITR 69 (Delhi)
RECTIFICATION	154	Rectification sought beyond four years from the date of original order on the issue or matter which was not part of or dealt with in any of the intervening rectification orders passed by AO, is void ab initio and invalid.	Precott Mills Ltd.	(2009) 178 Taxman 15 (Chennai)
RECTIFICATION	154	Issue regarding unabsorbed depreciation and losses while computing deduction u/s. 80HHC of the Act is a debatable issue and therefore the AO has no jurisdiction to pass order u/s. 154 of the Act to recompute deduction u/s. 80HHC of the Act.	Royal Cushion Vinyl	(2009) 28 DTR 22 (Bom.)
RECTIFICATION – INTEREST	154	Intimation issued u/s. 143(1)(a) of the Act cannot be rectified by the AO u/s. 154 of the Act after issue of notice u/s. 143(2) to frame regular assessment.	Nicco Corporation Ltd.	(2009) 24 DTR 271 (Cal.)
RECTIFICATION – LIMITATION- LIMITATION PERIOD U/S 154 (7) FOR RECTIFICATION BEGINS FROM DATE OF APPEAL ORDER	154(7)	Once appeal is decided the order of assessment merges with the order of Appellate authority. Limitation u/s. 154(7) would be calculated with reference to date of appeal effect order. Note: In Poonjabhai Vanmalidas 114 ITR 38 (Guj) and Sakseria Cotton 124 ITR 570 (Bom) it was held that if a part of the order of the AO which was sought to be rectified was untouched by the CIT (A), then the limitation for rectifying that part of the order would commence from the date of the original order because the “merger” was only with respect to issues adjudicated by the CIT (A). Similarly, in Uttam Chand 245 ITR 838 (Del), it	Tony Electronics Ltd.	(2009) 185 Taxman 121 32 DTR 348 (Del)



		was held that the doctrine of merger does not apply to matters which are not before the CIT (A).		
RECTIFICATION OF MISTAKE- SEARCH AND SEIZURE - BLOCK ASSESSMENT – SURCHARGE – RECTIFICATION	113, 254	When Tribunal has passed the order, question about retrospective applicability of amendment made to s. 113, was debatable hence, impugned order of Tribunal did not require any interference. The revenue relied on the judgment of Supreme Court in CIT vs. Suresh N. Gupta (2008) 297 ITR 322 (SC).	Kirti Kumar Shah	(2008) 176 Taxman 29 (Raj.)
RECTIFICATION OF MISTAKE - SERVICE OF NOTICE	154	Failure to serve notice before passing order of rectification violates the requirement of s. 154(3), hence order is bad in law.	Mintri Tea Company P. Ltd.	(2009) 319 ITR 264 (Cal).
RECTIFICATION OF MISTAKES – APPARENT FROM RECORDS	143(2), 154	When an assessment is subject-matter of proceedings u/s. 143(2), during pendency of such proceedings rectification proceedings u/s. 154 can not be initiated. Where there can conceivably be two opinions on a particular issue, provisions of s. 154 will not be attracted.	M.P. Telelinks Ltd.	(2009) 121 ITD 241 (Agra)(TM).
RECTIFICATION OF MISTAKES – DEBATABLE ISSUE	154	Question whether export incentive would qualify for deduction u/s. 80-IA is a highly debatable matter as there are contrary judgments on this issue and therefore it does not come within the purview of s. 154.	TTK Prestige Ltd.	(2009) 227 CTR 565 (Kar).
RECTIFICATION OF MISTAKES - SUBSEQUENT SUPREME COURT JUDGEMENT	154	Commissioner originally holding that, power subsidy received by assessee was not taxable on the ground that it was a capital receipt. Subsequent, rectification on ground that supreme court had decided that subsidy received after commencement of production was revenue receipt. Rectification made on basis of change of opinion, not permissible.	Mepco Industries Ltd.	(2009) 319 ITR 208 (SC)
REFUND – INTEREST	244A	Assessee is entitled to interest on the amount of interest allowable u/s. 244A of the Act.	H.E.G. Ltd.	(2009) 19 DTR 316 (MP).
REFUNDS	244A	Where the assessee had wrongly deducted tax at source without any statutory liability to make such deduction, subsequently when such amount is refunded to it the assessee is not entitled to interest u/s. 244A of the Act on such refund.	Universal Cables Ltd.	(2009) 26 DTR 98 (MP)
REFUNDS - INTEREST ON INTEREST	244A	When excess amount of tax is refunded but interest is not refunded therewith, interest on interest would also become payable.	Motor & General Finance Ltd.	(2009) 185 Taxman 167 (Delhi).
RELIEF U/S. 10(10C) – VOLUNTARY RETIREMENT	10(10C)	It was held that amounts up to five lakhs of rupees received on voluntary retirement entitled to exemption u/s. 10(10C). Amount in excess of five lakhs of rupees was entitled to relief u/s. 89.	Koodathil Kallyatan Ambujakshan	(2009) 309 ITR 113 (Bom)
REOPENING – JURISDICTION OF HIGH COURT UNIT OF ASSESSMENT	148,253(1)	The CIT(A) confirmed the order of the assessing officer that the income is to be assessed as income from house property for the A.Y. 1997-98. The	Divya Investment P. Ltd.	(2009) 313 ITR 363 (SC)



		<p>CIT(A) also directed that the A.Y. 1992-93 to 1999-00 should be reopened. The Tribunal reversed the order of the CIT(A) and held that the income is in the nature of business income and not income from house property. The High Court in the challenge to the reopening allowed the petition of the assessee.</p> <p>On an appeal by the department, the Supreme Court held that it was not open for the High Court to direct by an omnibus order that all subsequent years were connected years and that all income should be treated as business income. The Supreme Court further held that the unit for assessment was a 'year' and this was not a case of block assessment.</p>		
RESERVES FOR SHIPPING BUSINESS	33AC(1)	<p>It was held that it was clear from s. 33AC(1) as applicable to the A.Y. 94-95 that the only requirement prescribed was that the assessee must be a Govt. company or a company formed and registered in India with the main object of carrying on the business of operation of ships. There was no such requirement that the assessee in order to be eligible for deduction had to actually operate ships or that the amount in respect of which deduction was to be allowed and credited to the reserve account had to be the income earned from shipping business. It was further held that Amendment to s. 33AC with effect from April 1, 1996 was not clarificatory or retrospective.</p>	Gal Offshore Services Ltd	(2009) 309 ITR 125 (Bom)
RESIDENTIAL STATUS - RESIDENT BUT NOT ORDINARY RESIDENT	6, 10(15)	<p>In order to acquire status of "resident but not ordinary resident" (RNOR), in India, either of conditions enshrined in s. 6(6)(a) should be fulfilled i.e. either assessee should not be a resident in India in 9 out of 10 previous years preceding current year or he should not be in India for 730 days or more in 7 years preceding current year.</p> <p>S. 6(6) as substituted by Finance Act, 2003, w.e.f. 1-4-2004 is prospective in operation and, hence would not be applicable to AY 2001-2002.</p>	Jayram Rajgopal Poduval	(2009) 116 ITD 482 (Mum).
RETRACTION – EFFECT OF RETRACTION OF STATEMENT OF CONFESSION		<p>Merely on the basis of statement accused can not be prosecuted. The court held that</p> <p>(i) The retracted statement must be substantially corroborated by other independent and cogent evidences, which would lend adequate assurance to the court that it may seek to rely thereupon;</p> <p>(ii) The initial burden to prove that the confession was voluntary in nature would be on the Department.</p> <p>(iii) The burden is on the prosecution to show that the confession is voluntary in nature and not obtained as an outcome of threat, etc. if the same is to be relied upon solely for the purpose of securing a conviction.</p>	Vinod Solanki	www.itatonline.org (2009) 233 E.L.T. 157 (SC).



		(iv) With a view to arrive at a finding as regards the voluntary nature of statement or otherwise of a confession which has since been retracted, the Court must bear in mind the attending circumstances which would include the time of retraction, the nature thereof, the manner in which such retraction has been made and other relevant factors. Law does not say that the accused has to prove that retraction of confession made by him was because of threat, coercion, etc. but the requirement is that it may appear to the court as such.		
RETURN	139(9)	A return of income of a Company which is signed by the secretary of the company and not by the managing director as required u/s. 140 of the Act can be cured by virtue of s. 139(9) r.w.s. 292B of the Act. Thus, once the defect is removed by the assessee the return should be considered as a valid return under the scheme of the Act. The Court further, held that once the defect is removed by the assessee it will relate back to the original date of filing return.	Prime Securities Ltd.	(2009) 28 DTR 119 (Bom.)
RETURN – DEFECT	139, 292B	Assessing officer is duty bound to give a chance to assessee to rectify defect in return.	Morgan Stanley Asset Management Inc	(2009) 33 SOT 452 (Mum).
RETURN – DEFECTIVE RETURN – S. 139(9)	139(9)	The Assessee filed return of loss based on un-audited accounts which was considered as defective. The AO asked to file audited accounts within 15 days and rectify the defect. The Assessee requested for two months time and filed the accounts within the time requested for. The AO without rejecting the Assessee's request, treated the original return as defective return and the revised return filed as belated return and rejected the loss. Held that the Assessee's request for extension of time was if rejected, the order of rejection was never intimated to the Assessee. Thus the original return was treated as valid return and revised return also valid.	PIC (Gujarat) Ltd.	ITA No. 3058/Ahd/2002, Bench – B, A. Y. 1990-91, dt. 4-1-2008 BCAJ p. 519, Vol. 40-B, Part 4, January 2009.
RETURN – SIGNATURE	140	Where affairs of a company are managed by executive committee any member of executive committee could sign return.	Maharashtra Krishna Valley Development Corporation	(2009) 27 SOT 235 (Pune).
RETURN – VALIDITY OF RETURN – DEFECTIVE RETURN	139	It was held that where the return did not bear the signature of the assessee and had not also been verified by her, the return was an absolutely invalid return as it had a glaring inherent defect which could not be cured in spite of the deeming effect of s. 292B.	Harjinder Kaur	(2009) 310 ITR 71 (P&H)
REVENUE OR CAPITAL EXPENDITURE - TECHNICAL KNOW HOW	37	In collaboration agreement assessee obtained only right to use technical know how. Payment of lump sum fees and royalty is allowable as revenue expenditure.	Honda Siel Cars India Limited	(2010) 40 TLR (Part 466) 1 (Delhi)(AT)
REVISED RETURN - CLAIM IN	139(5)	Assessee having duly furnished the documents and submitted Form No. 10CCB during assessment	Ramco International	(2009) 221 CTR 491



ASSESSMENT PROCEEDINGS		proceedings, claiming deduction u/s. 80IB which was not claimed in the return, deduction is admissible even in the absence of a revised return. Editorial note:- Gietage (India) Ltd. vs. CIT (2006) 284 ITR 323 (SC)		17 DTR 214 (P&H)
REVISED RETURN - LOSS	139(3), 139(5)	Original return filed in time without audited accounts. The revised return filed along with audited balance sheet. Since revised return took place of original return and original return had been admittedly filed within time allowed u/s. 139(1), loss in question was allowed to be carried forward.	Esorts Mahle Ltd.	(2009) 119 ITD 119 (Delhi).
REVISION	263	Order passed by AO in accordance with law, judicial pronouncements and after considering relevant replies duly supported by evidence can not be branded as erroneous, merely because commissioner is of other view or in his opinion order passed is weak and not a detailed order. S. 263 empowers the Commissioner to have a supervisory jurisdiction and does not visualize a case of substitution of his judgment for that of AO.	Allied Engineers	(2009) 180 Taxman 70 (Delhi)
REVISION	263	Order u/s. 263 as per the direction of earlier CIT – AO passing the revised Order as per the revised return filed by the Assessee. In the absence of any error or anything unsustainable in law in the said Order, the Order could not be revised by the subsequent CIT.	Virendra Kumar Jhamb	(2009) 222 CTR 88 (Bom)
REVISION	263 r.w.s 115JB	Held, that when AO has taken a view, which is in tune with other decisions, and a possible view, then merely because the Commissioner does not agree with the view of AO, the action of Commissioner u/s 263 is unjustified.	Saluja Fabrics	(2009) 181 Taxman 132 (Chandigarh)
REVISION - ERRONEOUS AND PREJUDICIAL - LACK OF PROPER ENQUIRY	263	AO having accepted the accounts of the assessee after the latter had submitted the details as called for by the AO, it could not be said that he has not applied his mind to the relevant issues and therefore, order passed by CIT u/s. 263 is not sustainable, more so when he did not record a finding as to how the order of the AO is erroneous.	Rajiv Agnihotri	(2009) 23 DTR 476 (Del.)(Trib.)
REVISION – ERRONEOUS AND PREJUDICIAL ORDER	263	AO having taken a plausible view after investigation and proper enquiry, CIT cannot invoke reversionary power just to substitute his own view; assessment order cannot become erroneous where queries raised during the assessment proceedings are not recorded in final assessment order.	V.B. Construction (P) Ltd.	(2009) 28 DTR 84 (Kol)(Trib).
REVISION - ERRONEOUS AND PREJUDICIAL ORDER - ONE POSSIBLE VIEW	263	The assessee claimed that these expenses were in executing the projects regarding development of the packaged software and were revenue in nature. These expenses of the Assessee were considered as ongoing expense and lead to benefit of enduring nature on development of packaged software. Therefore, the order of AO in allowing this	Flextronics Software System Ltd.	(2009) 24 DTR 551 (Del)(Trib)



		expenditure cannot be said to be erroneous and prejudicial to the interest of the Revenue as the view of the AO having followed one possible view.		
REVISION – FURTHER ENQUIRY	263.	Commissioner can regard order as erroneous on the ground that in circumstances of case AO should have made further enquiries before accepting statement made by the assessee.	Rajalakshmi Mills Ltd.	(2009) 121 ITD 343 (Chennai) (SB).
REVISION – INQUIRY BY AO	263	Where the AO during the scrutiny assessment proceeding raised a query which was answered by the assessee to the satisfaction of the AO but the same was not reflected in the assessment order by him, a conclusion cannot be drawn by the Commissioner that no proper enquiry with respect to the issue was made by the assessing officer, and enable him to assume jurisdiction u/s. 263 of the Act. Further, the High Court also held that revision order passed by the Commissioner u/s. 263 of the Act on a ground in addition to the grounds mentioned in his show cause notice issued cannot be sustained.	Ashish Rajpal	(2009) 23 DTR 266 180 Taxman 623 (Delhi)
REVISION – INTIMATION	143(1), 263	An intimation u/s. 143(1) is not amenable to revisional jurisdiction of CIT u/s. 263. High Courts in India are not unanimous whether provisions of s. 263 are applicable where only Intimation u/s. 143(1) has been issued. Two reasonable views being possible, the one favourable to the assessee has to be preferred.	Vinod Kumar Rai	(2009) 116 ITD 72 18 DTR 171 120 TTT 1009 (Agra) (TM).
REVISION – LACK OF ENQUIRY	263.	AO having made enquiries, elicited replies and thereafter allowed the expenditure on tools and dyes as revenue expenditure, it can not said that it was “lack of enquiry” and therefore, the assessment order passed by the AO can not be revised u/s. 263.	Sunbeam Auto Ltd.	(2009) 31 DTR 1 227 CTR 133 (Del).
REVISION – MANUFACTURE OR PRODUCE - REPAIR OF TRANSFORMERS WITH ADDITION OF PARTS	80IA, 263	Assessee engaged in repair of burn transformers by using only the cabinet and lamination of burnt transformers and replacing various parts by parts manufactured by it, which were independently saleable in the market, granted exemption from payment of excise duty on such manufactured parts, was rightly granted deduction u/s. 80IA(2)(iv)(c) by the AO and the view of AO being a possible view, CIT was not justified in holding that the same was erroneous and prejudicial to interests of revenue and revision order was not justified.	Pal & Pal Electromechanical (P) Ltd.	(2009) 17 DTR 424 (Agra) (TM) (Trib.)
REVISION – ON ISSUE NOT MENTIONED IN SHOW CAUSE	263	Revision on issue not mentioned in show cause notice is not permissible hence, bad in law.	Contimeteres Electicals (P) Ltd.	(2009) 22 DTR 158 (Del).
REVISION - ON ISSUE NOT MENTIONED IN SHOW CAUSE NOTICE	263	In revision proceedings, Commissioner can not travel beyond reasons given by him for revision in show cause notice.	Geometric Software Solutions Co. Ltd.	(2009) 32 SOT 428 (Mum).



		Revision is not like reopening of assessment, entire assessment is not opened before the AO. Editorial - also see CIT v Contimeters Electricals Works P. Ltd. (2009) 22 DTR 158 (Delhi).		
REVISION – POWER TO REVISE - MERGER	263	AO partially disallowed claim u/s. 80-I. CIT(A) accepted entire claim. CIT(A) taking different view is not a case of an order erroneous and prejudicial to revenue. Hence Commissioner u/s. 263 could not withdraw special deduction u/s. 80-I in revision proceedings.	Nirma Chemicals Works P. Ltd.	(2009) 309 ITR 67 182 Taxman 183 (Guj.)
REVISION – SUMMARY ASSESSMENT	143(1)(a), 263	CIT has no power of revision u/s. 263 in the course of summary assessment where only intimation and acknowledgement are sent to the assessee after filing the return.	Karrtar Singh & Co. Pvt. Ltd.	(2009) 221 CTR 479 (P&H).
REVISION – TWO VIEWS	263	An order passed by the assessing officer cannot be revised only because another view is possible.	Greenworld Corporation	(2009) 314 ITR 81 23 DTR 185 224 CTR 113 181 Taxman 111 (SC).
REVISION – TWO VIEWS - COMPUTATION OF EXPORT PROFIT	80HHC, 80IB, 263	View taken by the AO in allowing deduction u/s. 80HHC, without reducing from the profit the deduction already allowed u/s. 80IB was a possible view and therefore the order passed by the AO cannot be treated as erroneous, and the order passed by the CIT u/s. 263 directing the AO to compute deduction u/s. 80HHC by reducing from profit the amount of deduction already allowed u/s. 80IB is set aside.	Honda Siel Power Products Ltd.	(2009) 22 DTR 164 123 TTJ 577 (Del)(Trib)(SB)
SALARY - PERQUISITES - STOCK OPTIONS	17(ia)	Conversion of warrants into equity shares under scheme ,benefit extended to assessee by virtue of employment hence difference between price of shares at time of exercise of option and predetermined price is liable to tax as perquisite u/s. 17(2)(iiia).	Tripti Sharma (Smt.)	(2010) 1 ITR 471 (Mumbai) (Trib)
SCIENTIFIC RESEARCH EXPENDITURE - IN HOUSE SCIENTIFIC RESEARCH	35(1)(iv)	For claiming deduction u/s. 35, there should be nexus between scientific research and with business carried on by assessee. If an assessee does not develop in house scientific research activities but is engaged in development and supply of scientific research to business of other assessee, deduction u/s. 35 would not be available hence expenditure incurred on the subsidiary would not be entitled deduction u/s. 35.	Ciba India (P) Ltd.	(2009) 121 ITD 94 30 SOT 269 (Mum.)
SEARCH - IF THE SEARCH WARRANT IS IN JOINT NAMES, AN ASSESSMENT IN INDIVIDUAL CAPACITY IS VOID	132 / 158BC	A search warrant u/s 132(1)(c) was issued in the joint names of the assessee and her spouse. Subsequently, a block assessment of undisclosed income was made u/s 158BC in the individual name of the assessee. In appeal against such assessment, the assessee raised a preliminary objection that the search warrant having been issued in the joint names of the assessee and her spouse, the assessment on the assessee in the	Vandana Verma	(Allahabad High Court) www.itatonline.org



		individual capacity was invalid. The objection was upheld by the Tribunal. The department appealed to the High Court. HELD, dismissing the appeal: S. 132(1)(c) empowers the officer to enter the premises etc and search it if he has "reason to believe" that "any person" is in possession of any money, bullion etc representing undisclosed income. As the search warrant was issued in the joint names of the assessee and her spouse, it means that the officer had reason to believe that the undisclosed assets and income were held jointly. If so, it is not open for the AO to assess the assessee individually on the basis of the assets and documents seized during the course of search in pursuance to the said warrant but the assessment ought to have been only in the capacity of AOP or BOI.		
SEARCH & SEIZURE - POWERS OF TRIBUNAL - VALIDITY OF SEARCH	132(1), 254(1)	While hearing an appeal against an order of assessment, Tribunal cannot go into the question of validity or otherwise of any administrative decision for conducting search and seizure.	Paras Rice Mills	(2008) 15 DTR 262 (P&H).
SEARCH & SEIZURE SURCHARGE	113	The Supreme Court held when the search was conducted on April 6, 2000, i.e. prior to June 1, 2002, the provisions of the Finance Act, 2001 would be applicable and surcharge would be leviable, on tax payable u/s. 113.	Rajiv Bhatara	(2009) 310 ITR 105 (SC)
SEARCH AND SEIZURE	132(5) 10 (22).	It was held, that when a public trust like the petitioner which ran a number of educational institutions had claimed exemption in view of the provisions of s. 10(22) of the Act, the officer passing orders u/s. 132(5) had to find out at least prima facie as to why and how such trust was not entitled to exemption. The order to the extent that he refused to consider the plea of the petitioner for exemption u/s. 10(22) of the Act was liable to be quashed.	Anjuman Hami E-Islam and Ors.	(2009) 310 ITR 37 (Bom)
SEARCH AND SEIZURE - ASSESSMENT	153A	S.153A does not authorize de novo assessment. Non-pending assessments do not abate. Additions must be confined to search material.	Anil Kumar Bhatia	(2010) 1 ITR 484 (Delhi)(Trib)
SEARCH AND SEIZURE - ASSESSMENT	153A, 132A	For invoking jurisdiction u/s. 153A, not only warrant of authorization is to be issued in name of assessee but also search shall have to be necessarily conducted or in case of requisition u/s. 132A, has to be made.	Rajat Tradecom India (P) Ltd.	(2009) 120 ITD 48 23 DTR 311 (Indore)
SEARCH AND SEIZURE - BLOCK ASSESSMENT	158BD	Proceedings u/s. 158BD initiated after 19 months of completion of proceedings u/s. 158BC, cannot be sustained. There being no reference of any seized material relatable to assessee in the note for initiating proceedings u/s. 158BD, such proceedings were invalid.	Bharat Bhusan Jain	(2009) 17 DTR 498 (Del.) (Trib.)
SEARCH AND SEIZURE - BLOCK ASSESSMENT -	127, 158BD	Where the notice issued and return filed pursuant thereto, proceedings dropped on ground of lack of	Subhas Chandra Bhaniramka	(2010) 320 ITR 349 (Cal).



JURISDICTION		jurisdiction and transferred to another officer. Held that transfer not permissible without following procedure.		
SEARCH AND SEIZURE – BLOCK ASSESSMENT – LIMITATION	132, 158BE	Search of assessee's office and business premises conducted on 12 th Dec., 1995 same concluded in that very day. Cash seized prohibitory order passed and panchnama drawn was the last Panchnama evidencing conclusion of search for purposes of limitation u/s. 158BE and not Panchnamas drawn on further searches conducted on 19 th Jan., 1996 / 7 th Feb., 1996 on which dates no seizure took place.	T.S. Chandrashekar Through LRs	(2009) 17 DTR 194 (Kar.)
SEARCH AND SEIZURE – BLOCK ASSESSMENT – REASSESSMENT	148, 158B(a)	No jurisdiction to reopen a Block assessment u/s. 148.	Cargo Clearing Agency (Gujarat)	(2008) 307 ITR 1 (Guj).
SEARCH AND SEIZURE – BLOCK ASSESSMENT – SURCHARGE	113	In view of the fact that the proviso was introduced by the Finance Act, 2002, w.e.f. 1 st June 2002, with prospective effect, and having regard to the principles of law that taxing statute should be construed strictly and ordinarily should not be held to have any retrospective effect, the question as to whether the said proviso is clarificatory and / or curative in nature and retrospective is referred to be considered by a larger Bench. Case referred CIT vs. Suresh N. Gupta (2008) 214 CTR 274 (SC) / (2008) 297 ITR 322 (SC).	Vatika Township (P) Ltd.	(2009) 17 DTR 353 221 CTR 409 314 ITR 338 (SC).
SEARCH AND SEIZURE – LIMITATION	158BE	Panchnama dt. 3 rd Jan., 2001, not showing that any search was conducted on that day and only depicting revocation of restraint order mentioned in Panchnama dt. 17 th Nov., 2000, it is only the Panchnama dt. 17 th Nov., 2000, which related to conclusion of search and relevant for computing limitation u/s. 158BE(1)(b), block assessment made on 30 th Jan., 2003 was thus barred by limitation. Editorial Note.: Nandlal M. Gandhi vs. ACIT (2008) 115 ITD 1 (Mum.)(TM) has also taken similar view.	S.K. Katyal	(2008) 16 DTR 285 (Del).
SEARCH AND SEIZURE - POWERS OF SEIZURE	132(1)(ii)(b)	It is open to the department to copy the data relating to the specified three entities of the assessee group from the two laptops which were seized from the possession of auditor of firm. Editorial Note : Delhi High Court Order : S.R. Batliboi & Co. Vs. Department of Income Tax (2009) 181 Taxman 9 (Del.)	S.R. Batliboi & Co.	(2009) 31 DTR 187 (SC).
SEARCH AND SEIZURE - SATISFACTION NOTE	132(1)	A copy of the information or the satisfaction note need not be furnished to the Petitioner.	Genom Biotech (P) Ltd. & Ors.	(2009) 224 CTR 270 (Bom.)
SEARCH AND SEIZURE – SATISFACTION NOTE	158BD	Provision of s. 158BD does not indicate that satisfaction should be of same person occupying office and who has initiated proceedings u/s. 158BC against person searched, rather it has to be AO having jurisdiction over person searched who has to record satisfaction that undisclosed income	Saroj Nursing Home	(2009) 116 ITD 311 (Luck.)



		<p>pertains to a third person who is not subjected to search and books of account and other documents have to be handed over to the AO having jurisdiction over that person.</p> <p>In view of provision of s. 147, which are held to be similar to provisions of s. 158BD, initiation of proceedings u/s. 158BD beyond period of six years cannot be regarded as valid.</p>		
SEARCH AND SEIZURE - WARRANT- BLOCK ASSESSMENT	132(1), 158 BC	No block assessment can be made directly where no search warrant is issued.	Nasreen Yusuf Dhanani	[2009] 118 ITD 133 (Mum).
SEARCH AND SEIZURE- ASSESSMENT- LIMITATION- SERVICE OF ORDER	153A.	Assessment order passed on 28th Dec., 2007, but served on 2nd Jan, 2008, beyond the period of limitation of 31st Dec, 2007, was barred by limitation and thus non est in law.	Shantilal Godawat & Ors.	(2009) 126 TTJ 135 (Jd).
SERVICE OF NOTICE	282	There is no presumption in law that any notice sent by speed post must have been served upon the assessee within 24 hours.	Nulon India	(2009) 183 Taxman 229 (Del.)
SERVICE OF NOTICE – RE-ASSESSMENT	148	AO assumes jurisdiction to complete assessment / reassessment only after service of a legal and valid notice in accordance with law and mere participation of assessee in proceedings cannot validate assessment proceedings. On the fact of the case the notice was served on a person at shop belonging to firm in which the assessee was partner. As the notice was not served on him, or any authorized representative, the assessment held to be void ab initio in absence of valid service of notice.	Anil Kumar Goel	(2008) 115 ITD 245 (Luck.)
SERVICE OF NOTICE – VALIDITY	282	Service of notice on the wife of assessee in his absence is proper service.	Gurbux Singh Gill	(2009) 123 TTJ 846 25 DTR 198 (Asr)(Trib).
SET OFF LOSS – CAPITAL GAINS	45, 74(1)	In AY 2002-03, the assessee suffered a long-term capital loss. U/s 74(1) as it then stood, such loss could be carried forward and set off against all capital gains including short-term capital gains. S. 74 was amended in AY 2003-04 to provide that long-term capital loss could only be set-off against long-term capital gains and not against short-term-capital gain. When the assessee claimed a set-off in AY 2004-05 the question arose whether the amended law should apply or the un-amended law. The tribunal held that Right to set-off loss is a “vested right” which is available despite amendment in year of set-off	Geetanjali Trading	www.itatonline.org
SET OFF LOSS - CAPITAL GAINS - CAPITAL LOSS	70(3), 112	Capital loss computed by assessee with indexation cost can be setoff against long term capital gains computed without indexation.	Keshav S. Phansalkar	(2009) 32 DTR 454 126 TTJ 892 (Mum).
SET OFF OF LOSSES - CAPITAL LOSS	70	Capital loss computed from a source with indexation can be set-off from capital gain	Mohanlal N. Shah (HUF)	(2008) 26 SOT 380 (Mum.)



		computed without indexation of another source.		
SETTLEMENT COMMISSION	245C	Once the income disclosed by the assessee u/s. 245C of the Act is not accepted as a full and true disclosure, the application u/s. 245C of the Act filed by the assessee is not maintainable at all and, therefore, Settlement Commission has no jurisdiction to enhance the income of the assessee.	Canara Jewellers & Ors.	(2009) 315 ITR 328 28 DTR 270 (Mad.)
SETTLEMENT COMMISSION – JUDICIAL REVIEW	245D	The court's power of judicial review on the decision of the settlement commission is very restricted. The court can only consider whether the order of the settlement commission is contrary to the provisions of the Income Tax Act.	Mahavir Rolling Mills Pvt. Ltd.	(2010) 40 TLR (Part-40) 18 (Guj).
SETTLEMENT COMMISSION - VALIDITY OF PROVISION, ABATEMENT OF PROCEEDINGS.	245D(4) 245A	The Court held that, 1) Date of 31-3-2008 for passing final orders is arbitrary, 1i) That except where the delay in passing the order is occasioned due to applicant, the proceedings shall not abate, 1ii) ITSC shall decide each case as to whether delay is occasioned by applicant, 1v) ITSC to dispose off the case by passing orders u/s. 245D(4). Editorial- more than 245 matters disposed by grouping.	Star Television News Ltd.	(2009) 317 ITR 66 225 CTR 140 184 Taxam 400 (Bom)
SHIPPING COMPANIES - QUALIFYING COMPANY - TONNAGE TAX	115VC, 115VA, 115VC(d)	Concept of the 'the main object of company' in s. 115VC(d), in absence of any provision to contrary in Chapter XII-G, has necessarily to be understood in manner in which that term is understood in common parlance without being tied down to any requirement of Companies Act to classify objects of a company in to principal and ancillary and show them distinctly in object clauses in memorandum of association of company, hence, only on the basis of object clause of company the provisions of tonnage tax can not be denied.	South India Corpn. Ltd.	(2009) 180 Taxman 319 26 DTR 36 (Ker.)
SPECULATION – LOSS - SHARE BROKER	73	Where assessee a share broker, had incurred loss on trading transactions of shares entered into on its own Account, and said loss was to be treated as speculation loss as assessee would be deemed to be carrying on speculative business to extent of business of purchase and sale of shares of other companies with in meaning of Explanation to s. 73.	B.L.K. Securities (P) Ltd.	(2009) 27 SOT 142 (Delhi)
SPECULATION- DERIVATIVE- FUTURES AND OPTIONS- INTERPRETATION OF TAXING STATUTES – RETROSPECTIVE OPERATION WHEN GIVEN	43(5)	Term 'derivative' in which the underlying asset in shares falls within the meaning of the term 'commodity' for the purpose of s. 43(5); cl. (d) of proviso to s. 43(5) is prospective in nature and is effective w.e.f. 1st April, 2006; i.e., asst. year 2006-07 onwards; therefore, loss on account of futures and options was rightly treated as speculative loss for the asst. year. 2004-05 under consideration. Loss on account of futures and options has to be	Shree capital services Ltd.	(2009) 318 ITR 1 (AT) 28 DTR 1 (Kol)(SB)



		<p>treated as speculative loss for the asst. year 2004-05. Clause (d) of proviso to s. 43(5) is prospective in nature and is effective from 1st April, 2006.</p>		
SPECULATIVE TRANSACTION – FUTURES AND OPTIONS - DERIVATIVE TRANSACTIONS - LOSS	43(5)(D)	<p>Loss claimed by assessee in derivative transaction is allowable as a business loss as the same is not covered by s. 43(5). Future and options not to be regarded as a speculation loss</p> <p>Clause (d) inserted in proviso to sub-s. (5) of 43 by the Finance Act, 2005 w.e.f. 1st April 2006, is retrospective in application.</p> <p>Editorial Note.: Reference can be made to following judgments.</p> <p>DCIT vs. SSKI Investors Services (P) Ltd. (2008) 113 TTJ 511 / 1 DTR 272 (Mum)</p> <p>R.B.K. Securities (P) Ltd. vs. ITO (2008) 118 TTJ 465 / 13 DTR 255 (Mum)</p>	P.S. Kapur	(2008) 15 DTR 181 (2009) 29 SOT 587 (Jp.)
SPECULATIVE TRANSACTIONS - FUTURE AND OPTION	28(i), 43(5)	<p>Loss arising in future and option transactions carried out in a recognized stock exchange is to be treated as business loss and not as loss in speculation.(Asst year 2006-07).</p> <p>Editorial - Shree Capital Services Ltd. v Asstt CIT (2009) 121 ITD 498 (SB)(Kol). considered.</p>	G.K. Anand Bros. Build Well (P) Ltd.	(2009) 34 SOT 439 (Delhi).
SUBSTANTIAL QUESTION OF LAW – FREIGHT PAID BY AOP – TO MEMBER OF AOP – LIABILITY TO TDS	194(C)(2) .	<p>The question whether freight paid by the assessee (AOP) to truck owners who in turn are members of the said AOP is subject to TDS u/s. 194C(2) is a substantial question of law and the Supreme Court directed the High Court to decide the issue in accordance with law.</p>	Sirmour Truck Operators Union	(2009) 313 ITR 27 (SC)
SUCCESSION TO BUSINESS	170	<p>Change in shareholding of the company does not change the legal identity of the company and therefore s 170 does not apply to such a case.</p> <p>The term “succession” in s. 170 has a somewhat artificial meaning. The tests of change of ownership, integrity, identity and continuity of a business have to be satisfied before it can be said that a person “succeeded” to the business of another;.</p>	Panchratna Hotels (P) Ltd.	(2009) 29 DTR 73 226 CTR 586 (HP).
SURVEY – CHARTERED ACCOUNTANT’S OFFICE	133	<p>Survey on Chartered Accountant’s office held to be illegal and ordered return of impugned documents to the chartered accountants within two weeks.</p>	U.K. Mahapatra and Co.	(2009) 308 ITR 133 221 CTR 328 (Orissa)
SURVEY – RETENTION OF DOCUMENTS	133A	<p>In case of the retention of documents beyond unreasonable period – Registry was directed to return the documents to the Respondents within two weeks with the liberty to take out xerox copies of all pages.</p>	U.K. Mahapatra & Co.	(2009) 225 CTR 131 (SC)
SURVEY- STATEMENT – ASSESSMENT	133A	<p>A survey was conducted in the premises of the assessee and the statement was not signed not by the Inspector or by the AO nor the contents of the</p>	Kailash Chand	(2009) 29 SOT 63 (Jodh)(URO).



		statement was explained to the person who gave the statement. The Assessing Officer based on the statement of the person made addition by applying higher gross profit. As the Assessee had also disclosed higher gross profit than in the preceding two years, the Tribunal deleted the addition which was made merely on the basis of statement.		
TAX AUDIT - BUSINESS INCOME	44AB	In case of an individual carrying on business as a sole proprietor, it is necessary to comply with provisions of s. 44AB, only in respect of his business income and not in respect of other income.	Ghai Construction	(2009) 184 Taxman 52 (Bom).
TRANSACTION IN SECURITIES	94(7)	For the purpose of invoking the provisions of s. 94(7) of the Act and to disallow the loss on sale of units, condition laid down in clauses (a), (b) and (c) of s. 94(7) are to be cumulatively satisfied. Thus, while the units of mutual funds were purchased by the assessee within the statutory period of three months, the sale of said units which is made beyond the statutory period of three months from the record date the provisions of s. 94(7) are not attracted and the loss on sale of such units cannot be disallowed.	Shambhu Mercantile Ltd.	(2009) 25 DTR 164 (Del.)
TRANSFER OF CASES	127	Order u/s. 127 of the Act transferring the assessee's case without affording him opportunity of being heard and also without giving any reason for transfer of case except for stating that the transfer was for administrative convenience, in such case the requirements of s. 127 of the Act were held to be not fulfilled and the order transferring the case was liable to be quashed.	Anand Kumar Arya & Anr.	(2009) 26 DTR 12 (Cal.)
TRANSFER OF CASES	127	Order u/s. 127 of the Act transferring the assessee's case without considering the written objections raised by the assessee to such transfer of its case was liable to be quashed.	Maritime Merchants (P) Ltd. & Anr.	(2009) 25 DTR 139 (Cal.)
UNEXPLAINED INVESTMENT	69	AO reopened the assessment of A.Y. 1997-98 on the basis of finding that the assessee had not paid tax on the income declared under VDIS, 97 and made the addition of income declared year-wise under VDIS as unexplained investment. It was held that the addition was not justified as the alleged investments were not made in the immediate preceding financial year to the assessment year under consideration.	Shanker R. Mhatre	(2009) 117 ITD 241 (Mumbai)
UNEXPLAINED INVESTMENT- SALE VALUE - STAMP VALUATION	50C, 69B, 143(3)	Difference between consideration shown in sale deed and valuation taken for stamp purposes can not be added as unexplained investment.	Fitwell Logic System P. Ltd.	(2010) 1 ITR 286 (Delhi) (Trib)
UNEXPLAINED INVESTMENTS – PRESUMPTION	69, 292C	Income from undisclosed sources – presumption u/s. 292C is a rebuttable presumption wherein Assessee could rebut the claim of the Department on the strength of documents seized from his premises. Assessee having failed to rebut the presumption and thus failed to discharge the burden cast on him, the addition made by the revenue is	Surendra M. Khandhar	(2009) 224 CTR 409 (Bom.)



		justified.		
UNEXPLAINED INVESTMENTS VDIS-1997	69	Income from undisclosed source – VDIS declaration valid certificate issued – subsequent sale of VDIS declared jewellery cannot be held as ingenuine on the face of verifiable evidences.	Uttamchand Jain	(2009) 224 CTR 473 26 DTR 23 182 Taxman 483 (Bom).
UNEXPLAINED MONEY - STATEMENT IN THE COURSE OF SURVEY	69A, 131 133A	In the course of survey excess cash was found, the assessee's statement was recorded u/s. 131, he offered the same as income. In the return the assessee has not shown the income offered in the course of survey. The explanation was offered stating that the said amount was withdrawal from the bank. The tribunal confirmed the addition by applying the test of human probabilities.	Shree Mahalaxmi Rice Mill	(2010) 122 ITD 1 (Nagpur)(TM)
WAIVER – INTEREST S.	234A, 234B & 234C	Where the assessee filed his return voluntarily and paid the taxes due thereon, the Court held that as the assessee who was a singer by profession working for sixteen hours a day the overbusy schedule of the assessee during the relevant assessment years constituted 'unavoidable circumstances', within the meaning of clause 2(e) of the notification issued by the C.B.D.T. with respect to waiver of interest u/ss. 234A, 234B and 234C of the Act.	S. Nagoor Babu Mano	(2009) 24 DTR 193 (Mad.)
WEALTH TAX - ASSET - BUILDING – STOCK-IN-TRADE	2(ea)(1)	Building constructed by assessee, Bbuilding was given on rent to a party pending registration and clearance of agreement for sale of the property to the same party constituted stock in trade of the assessee and therefore, it cannot be included in assets as defined in s. 2(ea).	Brilliant Estate Ltd.	(2009) 17 DTR 406 (Ind) (Trib.)
WEALTH TAX - ASSET- CASH IN HAND	2(ea)(vi)	Cash in hand in excess of Rs. 50000 held by individual assessee forms part of assets u/s. 2(ea)(vi).	K.R. Ushasree & Ors.	(2010) 33 DTR 112 (Ker)
WEALTH TAX – DEBT OWED	2(m)	Tax liability with respect to earlier year which is determined upon a settlement arrived at between the assessee and the revenue during the year under consideration was held to be an allowable deduction u/s. 2(m)(iii) of the Wealth – tax Act, 1957 for the purpose of computing net wealth.	Manna Lal Surana	(2009) 24 DTR 105 (Raj)
WEALTH TAX – DEBT OWED- REFUNDABLE SECURITY DEPOSIT	2(m)	Refundable security deposit taken by the assessee from the licence of the property being a debt in respect of the property which is chargeable to wealth tax, is fully deductible as debt owed irrespective of the fact that a part of the amount obtained by the assessee was invested in capital investment Bonds which are not chargeable to wealth tax.	Miss Deanna J. Jeejeebhoy	(2009) 222 CTR 202 (Bom).
WEALTH TAX – EXEMPTION – FIRM – JEWELLERY BUSINESS	5(1)(xxxii)	The assessee was a partner in a firm which carried on business in gold jewellery and precious and semi-precious stones, and consequently the assessee's interest in the firm is exempted u/s. 5(1)(xxxii) of the Wealth Tax.	Shyam Mohan	(2009) 313 ITR 416 (Raj.)



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WEALTH TAX – EXEMPTION – INDUSTRIAL UNDERTAKING – MANUFACTURE – PARTNER	5(1)(xxxii)	Firm engaged in manufacture of jewellery in an industrial undertaking within the meaning of explanation to s. 5(1)(xxxii) and therefore, assessee partner is entitled to exemption u/s. 5(1)(xxxii) in respect of her interest therein.	Bhanwari Devi & Ors.	(2009) 23 DTR 98 313 ITR 427 (Raj).
WEALTH TAX – FILM PRODUCTION - COPY RIGHT	5(I) (IV)	Assessee engaged in the film production value of assessee's right in film was in nature of copy right, hence, exempt u/s. 5(1)(v) of the Wealth-tax Act.	Krishna Kapoor	(2009) 180 Taxman 190 (Bom.)
WEALTH TAX – HOTEL – HOUSE – EXEMPTION	5(1)(iv)	A hotel cannot be considered to be a house so as to qualify for the exemption u/s. 5(1)(iv)	Hiro J. Nagpal	(2009) 223 CTR 414 22 DTR 307 313 ITR 28 (Raj)(FB). 181 Taxman 168 (Raj)(FB).
WEALTH TAX - HOUSE PROPERTY – TRUST - BENEFICIARIES – EXEMPTION	5(1)(vi)	Both the assessee being beneficiaries of a trust to the extent of 50 percent each they are entitled to exemption u/s. 5(1)(vi) in respect of their shares of the residential property belonging to the trust and the claim for exemption is allowable and there was no need to file revised return for claiming exemption.	Kumari Ragini Sanghi	(2009) 120 TTJ 1116 (Ind).
WEALTH TAX – JURISDICTION	127	Once a notification is issued u/s. 127 of the Income Tax Act, the AO notified u/s. 127(1) would exercise jurisdiction in the matter of Wealth Tax also as WTO. A separate notification is not required u/s. 8AA of Wealth Tax Act thereafter.	A.M. Bhiwandiwalla	(2009) 20 DTR 229 (Bom.)
WEALTH TAX - LAND USED FOR INTERNAL ROADS AND PLAY GROUNDS	40(3)(vi)	Land used for internal roads of the factory and play ground for workers was taxable as wealth of assessee company and not eligible for exemption u/s. 40(3)(vi) of the Finance Act, 1983.	Motwane Manufacturing Co. (P) Ltd.	(2009) 222 CTR 462 (Bom.)
WEALTH TAX – PENALTY - LEGAL REPRESENTATIVE	15B, 18, 19	Assessee filing return and receiving notices of initiation of penalty proceedings. Penalty order was passed after death of assessee, the Court held that no penalty can be levied against legal representative.	Late Shrimant F. P. Gaekwad	(2009) 313 ITR 192 (Guj.)
WEALTH TAX - VALUATION – RULE 1BB – SELF OCCUPIED HOUSE	7 RULE1BB	While applying provisions of Rule 1BB for valuing the self occupied property, Municipal rateable value with addition of statutory deductions, if any, may be adopted of standard rent for arriving at gross maintainable rent.	Smitaben N. Ambani	(2009) 19 DTR 160 (Bom.)
WEALTH TAX-FINANCE ACT,1983-BUSINESS ASSET-GODOWNS LET OUT	WT 40(3)(VI), 2(ea)	If a building is not used by a closely held company for its business but given on lease, it has to be considered for computing its net wealth u/s. 40(3)(vi) of Finance Act, 1983 and therefore, godowns given on lease by the assessee and not used for its business are includible in the net wealth of the assessee.	Anand Estate (P) Ltd.	(2009) 20 DTR 251 223 CTR 288 (Bom).
WRIT – ALTERNATIVE	Art 226.	Where the final order of the Tribunal u/s. 254(1) of the Act is recalled and fixed for hearing afresh, Writ petition challenging the action of Tribunal	Apex Metchem (P) Ltd.	(2009) 26 DTR 1 (Raj.)



REMEDY – ART. 226	254 (1) 260A.	recalling its order u/s. 254(1) of the Act, on the ground that the order was passed without jurisdiction, cannot be dismissed on the ground that the petitioner has an alternative remedy in form of appeal u/s. 260 A of the Act.		
WRIT - JURISDICTION – SEARCH AND SEIZURE ART - 226	132A Art 226.	Genesis for the entire episode of search seizure and dettaken ention having taken place at Hyderabad airport, cause of action arose at Hyderabad and therefore writ petition was maintainable at Andhra Pradesh High Court	Rajendraan Chingaravelue	((2009) 32 DTR 129 (SC)
WRIT – MAINTAINABILITY – ART. 226	Art 226.	Writ A Public Sector undertaking cannot file a writ petition praying for direction to the Revenue authorities to modify the assessment, in absence of clearance from Committee on Disputes (CoD).	Kolkata Port Trust	(2009) 26 DTR 33 (Cal).

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