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Digest Of Important Judgments On Transfer Pricing, International Tax And Domestic Tax

(Pronounced in the period from
July 2017 to September 2017)

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I. Transfer Pricing

a. International Transactions / Associated Enterprise

1. The Tribunal relying on the decision in assessee's own case for earlier year [TS-1034-ITAT-2016 (Bang)-TP] held that the sharing of cost between (assessee) Nike India and its AE in respect of contract with BCCI for promotion and brand building of Nike was an international transaction. Noting that the assessee incurred the expenditure for the promotion of brand Nike and the agreement between assessee and AE acknowledged that BCCI Agreement would provide suitable benefit for Nike brands in the territory, it held that the payment of 50% of the cost paid to the BCCI borne by the AE of the assessee was under conscious understanding and agreement between the parties to promote and enhance the brand value of NIKE which belonged to the AE of the assessee, which was within the ambit of the definition of international transaction u/s 92B which provides that even an arrangement, understanding or an action in concert having a bearing on the profit income, losses or assets of the enterprises would qualify as international transaction. Accordingly, it remitted the issue to the file of AO/TPO for the limited purpose of determination of ALP.

Nike India Private Limited vs DCIT-TS-647-ITAT-2017(Bang)-TP-ITA no. 1338/bang/2011 and 1181/bang/2012 dated 04.08.2017

2. The Court upheld the order of the Tribunal and held that for determining whether two parties are Associated enterprises, the conditions laid down in both Section 92A(1) and 92A(2) were to be fulfilled. It held that Section 92A(1) broadly states that two enterprises would be AEs if they have common management, capital or control, but 92A(2) provides practical illustrations to determine whether Section 92A(1) is satisfied. Accordingly, it held that the assessee and a concern from which is purchased rough diamonds viz. Blue Gems were not AEs despite the fact that the two entities were being controlled by the same family or four brothers and their close relatives as none of the conditions provided in Section 92A(2) were satisfied.

Pr.CIT vs. Veer Gems - TS-545-HC-2017(GUJ)-TP - TAX APPEAL NO. 338 of 2017 dated 20.06.2017

Pr. CIT vs. Veer Gems - TS-557-HC-2017(GUJ)-TP - TAX APPEAL NO. 339 of 2017 dated 20.06.2017

3. The Tribunal, relying on the decision in the case of Siro Clinpharm wherein it was held that amendment to Sec 92B was not retrospective at least to the extent pertaining to issuance of corporate guarantee, set aside CIT's revision order u/s 263 treating AO's order as erroneous & prejudicial to Revenue's interest as no TP-adjustment was made in respect of corporate guarantee extended by assessee to subsidiary/AE for AY 2010-11. Noting assessee's submission that corporate guarantee to an associate company was brought within the ambit of international transaction vide Finance Act 2012 (w.r.e.f. April 1, 2012). judicial precedents had held that such corporate guarantee was not an international transaction. Further, Form 3CEB was revised from April 1, 2013 (to cover transactions in the nature of guarantee) and assessee had already filed its tax return on October 8, 2010 (followed by revised return filed on March 30, 2012) for relevant AY 2010-11 i.e. before the amendment was made and before the new Form 3CEB had come into existence. Therefore, it held that when the amendment was brought in by the Finance Act, 2012 and when the Rules were notified on 10th June 2013, the assessee cannot be expected to have reported this transaction as international transaction prior to that. Accordingly, it held that there was no error in the order of the AO causing prejudice to the Revenue.

EIH Ltd vs CIT-TS-609-ITAT-2017(KOL)-TP-ITA No. 530/kol/2015 dated 09.06.2017

4. The Tribunal ruling in favour of the assessee, held that the TP provisions under Chapter X of the Act were not applicable to the assessee's sale and purchase transactions with 2 concerns (viz. Durian Industries and General Woods). In noted that Durian Industries was an Indian Tax Resident incorporated under the Companies Act, 1956 and therefore the transactions with it would not be an international transaction u/s 92B as the section postulates at least one non-resident. In respect of General Woods, the AO sought to treat it as an AE on three counts, - (i) two shareholders of the

assessee were also directors/shareholders in General Woods u/s 92A(2)(j), (ii) THE Shareholders were involved in fixing prices of transactions between assessee & General Woods u/s/ 92A(2)(i) (iii) the total purchases made by assessee from both the entities (Durian and General Woods) exceeded 90% of total purchases. The Tribunal held / observed that i) 92A(2)(j) was not applicable as the TPO failed to demonstrate how the test mentioned in the said section was satisfied ii) Section 92A(2)(i) did not apply as the shareholders determined the purchase and selling prices for and on behalf of the assessee only and not for General Woods and iii) section 92A(2)(h) did not permit aggregation of purchases from different parties for the purpose of testing the limit of 90% prescribed. Accordingly, it held that the lower authorities had erred in considering transactions with Durian and General Woods as international transactions and deleted the TP adjustment.

Elder Exim Pvt Ltd vs DCIT-TS-689-ITAT-2017(Mum)-TP-ITA No.5385/Mum/2014, (A.Y. 2008-09) ITA No.2744/Mum/2014, (A.Y. 2009-10) ITA No.5386/Mum/2014, (A.Y. 2010-11) dated 16.08.2017

b. ***Most Appropriate Method***

Comparable Uncontrolled Price

5. The assessee provided two types of broking services to related as well as unrelated parties viz., Delivery Verses payment (DVP) and direct custodian settlement (DCS) and benchmarked these international transactions using TNMM as MAM. Since an internal CUP was available, the TPO rejected TNMM and applied CUP. However, it rejected assessee's contention that it had incurred lower cost in providing broking services to related parties than to unrelated parties and accordingly adjustment for additional cost incurred in transaction with unrelated parties was to be allowed to the assessee. The CIT(A) observed that there were substantial differences between the functions undertaken and risks assumed by assessee while providing broking to related and unrelated parties, the TPO ought to have granted adjustment sought by the assessee for additional cost incurred for unrelated parties and accordingly deleted the adjustment. Tribunal upheld the order of CIT(A). The Court observed that CIT(A) and Tribunal had rightly accepted the differences in functions performed and the risk undertaken by the assessee w.r.t the transaction between related and unrelated parties and accordingly it held that where the rates charged by the assessee to related parties and unrelated parties were not the same, CUP method could be used after making adjustments to the rate charged by the assessee to related and unrelated parties.

J P Morgan India Pvt Ltd-TS-568-HC-2017(BOM)-TP-ITA No 1599 of 2014 dated 07.07.2017

6. Assessee's group company had acquired controlling interest in HS Penta (engaged in manufacture of automotive cylinders) and post the acquisition transferred the business to the assessee so as to take advantage of lower costs and bigger markets in India. The TPO adopting WDV as the CUP sought to reduce the ALP value of assets purchased and rejected the contention of the assessee that since production commenced immediately, the impact of purchase of assets was factored into the operating profits. The Tribunal rejected both contentions and held that WDV was not reflective of fair market value and that capital costs could not be imputed with reference to profits. Noting that at the time of purchase of controlling interest of HS Penta, the assessee's group company had valued the shares of HS Penta, which was based on the value of the assets and liabilities, it held that the value of assets therein would be an appropriate CUP since the acquisition was an independent uncontrolled transaction and that there was hardly any time lag between the acquisition and subsequent transfer to India. Accordingly, it remitted the matter to the AO for fresh determination based on such valuation.

Interpump Hydraulics Pvt Ltd – TS-621-ITAT-2017 (CHNY)) – TP-ITA no. 459/mds/2017 dated 30.06.2017

Cost Plus Method

7. Tribunal upheld CIT(A) order deleting TP-adjustments in respect of export of manufactured steel items to its AE and receipt of commission from AE. In respect of export transaction, the TPO had applied CUP method over assessee's cost plus method(CPM) on the basis of small sales made by assessee of similar components, which was rejected by CIT(A). Noting that the TPO had accepted CPM in the

subsequent AYs 2008-09 to 2010-11, the Tribunal held that there was no merit in the order of TPO applying CUP method to benchmark the international transaction and accordingly, upheld the order of CIT(A). Further, in respect of commission, the TPO had applied internal rate of return for benchmarking, however, CIT(A) had upheld assessee's CUP method. Relying on the decision in the assessee's own case for AYs 2006-07 to 2010-11, wherein the TPO had applied CUP method from AYs 2006-07 to 2010-11, the Tribunal upheld CIT(A)'s order deleting TP adjustment for the same.

DCIT vs Thyssenkrupp Electrical Steel India Pvt Ltd-TS-567-ITAT-2017(PUN)-TP-ITA No. 2005/PUN/2014 dated 06.04.2017

8. Where the TPO made an adjustment by adopting the Cost Plus method as the most appropriate method (as opposed to TNMM adopted by the assessee) to benchmark the assessee's international transaction viz. sale of formulations & hospital products by the assessee to its Kenya based AE back to AO for AY 2004-05, noting that the Tribunal in the prior assessment years had remitted the issue back to the CIT(A), the Tribunal remitted the issue to the file of AO for fresh adjudication. It further held that even though the Tribunal had remanded ALP-issue to CIT(A) in preceding years, it was the Assessing Officer who needed to re-adjudicate to avoid multiplicity of proceedings before the assessing authority and the CIT(A)

Cadila Pharmaceuticals Ltd. vs. DCIT-TS-715-ITAT-2017(AHD)-TP-ITA No. 1117/ahd/2012 & 848/ahd/2016 dated 11.09.2017

Resale Price Method

9. The Tribunal held that where the assessee was engaged in purchase of finished goods from its AE without any value additions, the most appropriate method for benchmarking the international transactions was the Resale price method. It held that the TPOs reasoning to adopt TNMM i.e that comparability could be compromised under TNMM which provides for broad comparability as opposed to higher degree of similarity under the other methods was invalid.

ACIT vs Akzo Nobel Car Refinishes India Pvt. Ltd-TS-661-2017(DEL)-TP-ITA No. 1925/del/2011 and ITA No. 6482/del/2012 dated 04.08.2017

10. Where assessee bought products from AE and resold them without further processing, the Tribunal, relying on the decision in the case of Tektronix India P Ltd [ITA No. 1334/bang/2010 dated 31st October 2012], held that RPM was the most appropriate method. It also relied on the case of Frigoglass India Pvt. Ltd. [TS-112-ITAT-2014(DEL)-TP] and Bose Corporation India Pvt. Ltd which upheld Resale Price Method as the most appropriate method in case of a distributor. This view was further fortified by OSI Systems Pvt. Ltd ruling wherein all the aforementioned rulings were considered before deciding in favour of RPM in case of distribution activity. The Tribunal opined that it was a settled position in law that in case of distribution activity, there could not be any value addition to the product in question, even when selling and marketing expenses were borne by assessee. Noting that Revenue did not dispute that assessee was into distribution activity, it held that in such cases, Resale Price Method was the most appropriate method and accordingly reversed the decision given by the TPO/DRP of using TNMM as the most appropriate method for the transaction under consideration.

Fresenius Kabi India Private Limited vs DCIT-TS-625-ITAT-2017(PUN)-TP-ITA No.235/pun/2013 dated 16.06.2017

11. The Tribunal, following co-ordinate bench ruling in assessee's case for 3 years, remitted ALP-determination of assessee's international transaction of purchase of finished cosmetic goods under Resale Price method (RPM). Noting that the assessee was engaged in trading of goods without any value addition and the assessee had been consistently applying RPM as MAM which had been accepted by Tribunal in the preceding years, the Tribunal rejected assessee's argument to switch over from RPM to TNMM. Further, relying on the decision in the case of Keihin Penalfa Ltd [TS-474-HC-2015(DEL)-TP] it admitted assessee's additional grounds and held that TP adjustment should be limited to the international transactions alone and accordingly directed the AO/TPO to determine the

ALP of the international transaction after providing a reasonable opportunity of being heard to the assessee.

Oriflame India Pvt Ltd vs ACIT-TS-673-ITAT-2017(DEL)-TP-ITA No.328/Del/2017 dated 13.06.2017

Transactional Net Margin Method

12. The Tribunal deleted TP adjustment of Rs. 612.03 crores in respect of sale of Pantoprazole tablets by assessee (Indian Pharma company engaged in manufacturing of bulk drugs as well as formulation products) to AE (SPG BVI). The TPO/CIT(A) had rejected TNMM adopted by assessee on the ground that the assessee was not merely a contract manufacturer but performed substantial functions and accordingly applied PSM on the basis that respective functions between assessee and AE could not be distinctly ascertained. Noting that the assessee performed only one simple function of manufacturing the tablets without providing any other significant unique contribution, the Tribunal held that as per OECD guidelines the profit split method was not appropriate for benchmarking. Further, it held that the conditions for applicability of PSM i.e. transfer of unique intangibles & interrelated multiple transactions were both missing in present case. Accordingly, it deleted the TP-adjustment.
Sun Pharmaceuticals Industries Ltd vs ACIT-TS-596-ITAT-2017(Ahd)-TP-ITA No.3297 & 3420/AHD/2014 dated 16.06.2017
13. Where the assessee had adopted the CUP method to benchmark its purchase and sale transactions from its AEs and the trade discount granted to the AE on account of prepayment (which was accepted by the TPO / DRP) and had also applied TNMM to corroborate the same, which was rejected by the TPO / DRP and the assessee appealed before Tribunal challenging the said rejection, the Tribunal held that once CUP was applied as the MAM it was irrational for the assessee to choose to apply TNMM to substantiate the benchmarking of the transactions. Accordingly, it dismissed the appeal of the assessee challenging the rejection of TNMM.
Cargill Foods India Limited vs ACIT-TS-541-ITAT-2017(PUN)-TP-ITA No. 1557/PUN/2011 dated 21.04.2017
14. The Court, allowing assessee's appeal, reversed Tribunal order remitting ALP determination in respect of assessee's import of raw materials, components and semi-finished goods in manufacturing segment (class I transactions) and also for assessee's class II transactions in respect of import of finished goods in trading segment. It held that on a plain reading of the order of CIT(A), it was apparent that it agreed that transactions both in class I and Class II segments had to be benchmarked by applying TNMM and therefore it was factually incorrect on part of the Tribunal to observe the contrary. Referring to a compilation of the orders passed by TPO for subsequent AYs 2007-08 to 2010-11, the Court held that there was factually no change in the classification or the nature of international transactions undertaken or the functional profile of the Assessee and thus rejected Revenue's contention that the Court should proceed on the assumption that assessee had changed his business profile and functions. Further, it held that in the absence of any change in assessee's business profile there was no need to uphold the Tribunal order remitting the matter to the TPO / AO or Tribunal for a fresh consideration as remitting the matter back would be a sheer waste of time, serving no purpose. **Accordingly, it set aside the order of Tribunal and affirmed the order of CIT(A).**
Rayban Sun Optics India Ltd vs CIT-TS-597-HC-2017(DEL)-TP-ITA NO. 889/2016 & CM APPL. 45967/2016 dated 11.07.2017
15. The assessee provided sales support services and liaisoning services to its AEs with regard to the exports and imports of the commodities from its AE to / from India and benchmarked the international transaction adopting TNMM as MAM, which was rejected by TPO and recharacterized the service and commission activities of the assessee as trading segment. On appeal, the Tribunal observed that in assessee's own case for AY 2007-08 and 2008-09 had ruled on identical issues which were decided in favour of assessee. ITAT deleted the adjustment relying on Li & Fung HC ruling [TS-346-HC-2013(DEL)-TP]. In that case, it was held that computation of the operating profit margin by increasing the cost of the sales leads to an arbitrary adjustment of assessee's income and that such

alteration resides plainly outside the Rules and the provisions of the Act. ITAT upheld assessee's international transactions computed by using TNMM as MAM and Berry Ratio as PLI. The High Court dismissed Revenue's appeal on the ground that no substantial question of law arose. Accordingly, the Revenue filed a SLP before the Apex Court which was admitted.

Pr. CIT vs Mitsui and India Pvt Ltd-TS-602-SC-2017-TP-ITA No. 788/2016 dated 28.02.2017

16. The Tribunal observing that the international transaction of imports from AE had a direct bearing on the export of goods to AE as the price of exports to AE was impacted by import price, held that when the transactions were multiple and inter-related then if a particular transaction out of the composite transactions could not be tested under CUP then it was not proper to apply separate methods for determining the ALP for each of the transaction. Further, noting that TPO had first applied TNMM on assessee's entire turnover to propose TP-adjustment on import transaction which was subsequently set-off against adjustment on export transaction (determined based on internal-CUP), it upheld CIT(A)'s adoption of TNMM for benchmarking assessee's import and export transactions and dismissed the Revenue's appeal.

ACIT vs Gates India (P) Ltd-TS-649-ITAT-2017(DEL)-TP-ITA No. 75/del/2011 dated 31.07.2017

17. Noting that the domestic transaction with non-AE was entirely different (including geographical difference) from the international transaction, the Tribunal rejected internal TNMM adopted by assessee to benchmark provision of telecommunication networking services to AE for AYs 2009-10 to 2011-12 and held that entity level results comprising of international transactions and domestic transactions could not be considered for the purpose of testing the price of the international transactions. Further, it held that CUP was the most appropriate method since, prior to assessee's incorporation, AE was availing networking services directly from Tata Communications but post incorporation, assessee became the lease holder of the network owned by Tata Communications & started raising bills to AE.

Cable & Wireless Networks India Pvt. Ltd vs. DCIT-TS-616-ITAT-2017(Bang)-TP-IT(TP)A no. 1549/bang/2014, 401 and 402/bang/2017 dated 12.07.2017

18. The Tribunal, allowed Revenue's appeal and held that the assessee was not justified in benchmarking the purchase price of raw materials acquired from its AE under CUP by comparing the price charged by the AE to independent third parties in Europe as the market conditions of Europe and India were not similar and had different regulatory norms for pollution caused by automobiles. Accordingly, it upheld AO/TPO's approach of adopting TNMM and benchmarking the profit margins with the other comparables in India having similar market conditions.

DCIT vs Ecocat India Pvt Ltd-TS-722-ITAT-2017(DEL)-TP-ITA No. 847/Del/2012 dated 15.09.2017

19. The Tribunal, noting assessee's submission that once TNMM at entity level was applied and accepted by TPO and the items of expenditure formed part of the operating expenditure, no separate adjustment on account of specific items of expense was required, remitted the TP-adjustment in respect of selling commission and network charges paid by assessee to its AE to the file of AO directing it to delete the TP adjustment on account of these two items if it formed part of operating expenditure.

Mphasis Ltd vs. Addl. CIT-TS-745-ITAT-2017(bang)-TP-ITA No. 242/bang/2014 dated 09.08.2017

20. Noting that the department had accepted TNMM as the most appropriate method in the subsequent year for benchmarking the assessee's international transaction of provision of software services to its AE and the facts prevalent in the impugned & subsequent year were the same, the Tribunal upheld the order of the CIT(A)/DRP accepting assessee's adoption of TNMM over TPO's adoption of PSM as the most appropriate method and accordingly dismissed Revenue's appeal.

DCIT vs Target Sourcing Services India Pvt Ltd-TS-720-ITAT-2017(DEL)-TP-ITA.No.457/Del./2014 dated 13.09.2017

c. **Comparability – Inter and Intra Industry**

ITES Sector - Software Development Services

21. The Tribunal held that the assessee engaged in providing software development services could not be compared to Infosys Ltd, Larsen & Toubro Infotech Ltd, Mindtree Ltd, Persistent Systems Ltd, Spry Resources having turnover Rs. 33083 crores, Rs. 23685533 crores, 12558 crores, 8427.4 and Rs. 37074498 crores respectively as they failed the turnover filter of 10 times the assessee's turnover of Rs. 51.99 crores.

Further, it remitted the comparability of Genesys International Corpn. Ltd to the file of the DRP in the absence of availability of annual report or a ruling pertaining to the relevant AY.

Mindteck (India) Ltd vs DCIT- [TS-533-ITAT-2017(Bang)-TP]- IT(TP)A No.1834/B/16 dated 24.03.2017

22. The Tribunal held that the assessee engaged in providing software development services for AY 2006-07 could not be compared to:-

- Aztech Software Ltd, Geometric Ltd (seg.) and Megasoft Ltd (seg) having RPT of 17.78%, 19.34% and 17.08% respectively as it failed the RPT filter of 15% applied by TPO. Further, Megasoft was engaged in the business of which was functionally dissimilar to the assessee.
- iGate Global Solutions Ltd (seg), Infosys Ltd, Mindtree Consulting Ltd, Persistent Systems Ltd, Sasken Communication Ltd, Tata Elxsi Ltd and Flextronics Software Ltd having turnover of Rs, 527.91 crores, Rs. 9028, Rs. 448.79 crores, Rs. 209.18 crores, Rs. 240.03 crores, Rs. 188.81 crores and 595.12 crores respectively as it failed the turnover filter of 10 times the assessee's turnover of Rs. 16.97 crores.
- Lucid Software Ltd having turnover of Rs. 1.02 crores as it failed the turnover filter of 1/10th of assessee's turnover of Rs.16.97 crores
- KALS Info Systems Ltd as it was engaged in the business of sale of products and training which was functionally dissimilar to the assessee.

Further, for AY 2007-08, the Tribunal held that the assessee could not be compare to:

- Geometric Ltd and Ishir Infotech Ltd having RPT of 19.98% and 21.97% as it failed the RPT filter of 15% applied by TPO.
- Flextronics SW Systems Ltd, iGate Global Solutions Ltd, Infosys Tech Ltd, Mindtree Ltd, Persistent Systems Ltd, Sasken Commn. Tech Ltd, Tata Elxsi Ltd having turnover of Rs. 848.66 cr, Rs. 747.27 cr, 13149 cr, 590.35 cr, 293.75 cr, 343.57 cr, 262.58 cr and 9616 cr respectively could not be compared to the assessee having turnover of Rs.22.06 crores as it failed the turnover filter of 10 times the assessee's turnover.
- KALS Information Systems Ltd, Lucid Software Ltd and Megasoft Solutions Ltd having turnover of Rs, 2 crores, 1.70 crores and 1.85 crores could not be compared to the assessee as it failed the turnover filter of 1/10th of assessee's turnover of Rs. 22.06 crores.
- Accel Transmatics Ltd as it was engaged in providing services in the form of ACCEL IT and ACCEL animation services for 2D and 3D animation.
- Avani Cimcon Technologies Ltd as it was engaged in the business of software development and development of software products and segmental details were unavailable.
- Celestial Labs Ltd as it was engaged in clinical research and manufacture of bio products and other products and thus functionally dissimilar to the assessee.
- E-zest Solutions as it was engaged in the business of rendering product development services and high end technical services (KPO services) and thus functionally different from the assessee.
- Helios Matheson Information Tech. Ltd as it was engaged in the business of application software and thus functionally dissimilar to the assessee.
- Thidware solutions Ltd as it was engaged in the business of product development and earned revenue from sale of licenses and subscription.
- Quintegra Solutions Ltd as it was engaged in the business of developing proprietary software products and owned intangibles.

Aspect Technology Centre India Pvt. Ltd vs ITO-TS-518-ITAT-2017(Bang)-TP-IT(TP)A No. 1252(bang)2011 and IT(TP)A no.1391(bang) dated 02.05.2017

23. The Tribunal held that assessee engaged in the business of IT Support services segment could not be compared to:

- Bodhtree Consulting Ltd, Eclerx Services Ltd and Moldtek Technologies Ltd as the said companies were engaged in KPO services therefore functionally dissimilar to the assessee.
- Infosys BPO Ltd and Wipro Ltd as they had huge brand value and therefore could not be compared to the assessee.
- Informed Technologies India Ltd and Caliber Pint Business Solutions Ltd as they had an RPT to sales ratio of 15.93% and 15.44% which failed the 15% RPT filter adopted by TPO.
- Triton Corporation Ltd and Maple Esolutions Ltd as the promoters of the two companies were involved in fraud for earlier years and therefore the financial results could not be relied on.
- Iservices India Pvt Ltd and Apex Advanced Tech Pvt Ltd as they were engaged in the business of providing data creation services and therefore functionally dissimilar to the assessee.

In respect of Software segment, it held that the assessee could not be compared to:

- Accel Transmatic Ltd as it was engaged in design, development and manufacture of multifunction management system and ticket vending system as well as providing training in hardware and networking, enterprise system management and software services for 2D/3D animations and therefore functionally dissimilar to the assessee.
- Avani Cimcon tech Ltd as it was engaged in business of software products and therefore functionally dissimilar to the assessee.
- Celestial Labs Ltd as it was engaged in clinical research and manufacture of software products and therefore functionally dissimilar to the assessee.
- KALS Information Systems Ltd as it was engaged in development of software products as well as providing training and therefore not functionally comparable to the assessee.
- E-Zest Solutions Ltd as it was product development and high end KPO technical services.
- Thirdware Solutions Ltd and Persistent Systems Ltd as they were engaged in software product development and therefore functionally dissimilar to the assessee.
- Helios & Matheson Information Technology Ltd as it was engaged in development and sale of software products.
- Infosys Technologies Ltd as it owned significant intangibles and had huge revenues from software products with no segment break-up available.
- Wipro Ltd as it owned intellectual property and therefore could not be compared to the assessee.
- Tata Elxsi Ltd as it had significant R&D activity, brand value and therefore could not be compared to the assessee.
- Lucid Software Ltd as it was engaged in development of software products.
- Flextronics Software Systems Ltd as it was engaged in software development services as well as software products and segmental details were unavailable.

Mphasis Ltd vs ACIT-TS-562-ITAT-2017(BANG)-TP-ITA No. 14/bang/2012 dated 19.05.2017

24. The Tribunal remitted the selection of comparables for assessee being a captive software development company to the file of AO/TPO with the direction to apply 10 times turnover filter observing that 10 times turnover filter was a more just filter. Further, in view of the consistent view taken by the Tribunal that in normal circumstances, RPT tolerance range should not exceed 15%, it directed the TPO to apply 15% RPT filter instead of 25% applied by TPO.

Microchip Technology (India) Pvt Ltd vs ACIT- [TS-535-ITAT-2017(Bang)-TP]- IT(T.P) A No.1586/Bang/2012 dated 03.05.2017

25. The Tribunal held that the assessee engaged in providing software development services was not comparable to:-
- KALS Information Systems Ltd as it was engaged in the business of consultancy, information provider and general insurance provider and thus functionally dissimilar to the assessee.
 - Bodhtree Consulting Ltd as it was engaged in providing KPO services and therefore functionally dissimilar to the assessee.
 - Tata Elxsi Ltd as it was engaged in the business of providing KPO services
 - Persistent Systems Ltd as it was engaged in development of software products.
 - Sasken Communications Tech Ltd as it owned IPR and also had branded products.
 - Akshay Software Technologies Limited as its turnover was only Rs. 12.23 crores therefore failing the turnover filter of 1/10th of assessee turnover of Rs. 239 crores.

Further, it remitted the comparability of L&T Infotech Limited to the AO/TPO with a direction to verify the RPT %.

DCIT vs ABB Global Services Pvt Ltd-TS-501-ITAT-2017(Bang)-TP-IT(TP)A No.49 and 97/B/2014 dated 05.05.2017

26. The Tribunal held that the assessee, engaged in providing software development services could not be compared to:

- Avani Cimcon Technologies Ltd as it was engaged in development of software products and segmental details were not available.
- Celestial Labs Ltd as it was primarily engaged in clinical research and manufacture of bio and other products and therefore functionally dissimilar to the assessee.
- KALS Information Systems Ltd as it was engaged in the business of software product development and therefore functionally dissimilar to the assessee.
- Accel Transmatic as it was engaged in providing ACCEL IT and ACCEL Animation services which was functionally dissimilar to the assessee.
- Lucid Software Limited as it was engaged in the business of software development services and development of software products and segmental details were unavailable.
- Infosys Technologies Ltd as it was an IT service giant and assumed all risks while the assessee assumed limited risk.
- Wipro Ltd as it was a global IT company and 67% of its sales related to products which were sold at premium resulting in higher profitability.
- Tata Elxsi Limited as it was engaged in the development of niche product and development services which was functionally dissimilar to the assessee.
- E-Zest Solutions Ltd as it was engaged in rendering product development services and high end technical services which were basically KPO services.
- Thirdware Solutions Ltd as it earned revenue from sale of licenses and therefore was not comparable to the assessee.
- Geometric Software Ltd having RPT 19.98% as it failed the RPT filter of 15% applied by TPO.
- Ishir Infotech Limited having RPT 21.97% as it failed the RPT filter of 15% applied by TPO.
- Helios & Matheson Information Technology Ltd as it was engaged in the business of development and sale of software products and thus functionally dissimilar to the assessee.
- Persistent System Ltd as it was engaged in the business of product development and product design services and segmental details were unavailable.

Tavant Technologies India Pvt Ltd vs DCIT-TS-488-ITAT-2017(Bang)-TP-IT(TP)A No.292/bang/2014 and 1592/bang/2012 dated 31.05.2017

27. The Tribunal held that the assessee engaged in the business of providing software development services to its AE could not be compared to:

- Foursoft Limited as it was engaged in the business of software products and thus functionally dissimilar to the assessee.
- Thirdware Solution Ltd as it failed the 75% revenue filter of ITeS segment applied by TPO.
- Tata Elxsi Ltd as it was engaged in providing product design services and thus functionally dissimilar to the assessee.

Further, it included Flextronics Ltd which was wrongly excluded by TPO as 85% of the revenue was earned from software development services.

JCIT vs Winphoria Networks India Pvt Ltd-TS-513-ITAT-2017(Bang)-TP dated 24.05.2017

28. The Tribunal held that the assessee engaged in the business of providing IT enabled services to its AE/overseas group company could not be compared to:-

- Vishal Information Technologies Ltd as it outsourced majority of its work and thus had a completely different business model than the assessee.
- Mold Tek Technologies Ltd as it was engaged in providing structural engineering services and during the year, it had also entered into an extraordinary transaction of amalgamation.
- Accentia Technologies Ltd as it had a different revenue model comprising of Medical transcription coding and software which was functionally dissimilar to the assessee. And segmental details were unavailable.

- E-clerx Services Ltd as it was engaged in providing KPO services which was functionally dissimilar to the assessee.
- Bodhtree Consulting Ltd as it was engaged in providing open and end to end web solutions, software consultancy, design and development of solution and segmental details were unavailable.
- Informed Technologies India ltd as it had a high profit margin of 34.71% for AY 2007-08 compared to losses for earlier year and therefore had an abnormal business trend.
- HCL Comnet Services Ltd as it followed a different accounting year compared to the assessee.
- Infosys BPO Ltd as it was engaged in CRM, finance and accounting, knowledge services, order management and procurement and human resources for various vertical business undertaking and thus functionally dissimilar to the assessee.
- Wipro Ltd as the company's revenue from ITeS segment was Rs 979 crores as compared to assessee's 55.94 lacs.

American Express (India) Pvt Ltd vs DCIT-TS-551-ITAT-2017(del)-TP-dated 07.06.2017

29. The Tribunal held that the assessee engaged in the business of software development and testing services could not be compared to:-

- Avani Cimcon technologies ltd as it was engaged in the business of software product development and thus functionally dissimilar to the assessee.
- Celestial Labs ltd as it was engaged in the business of product development in the field of biotech and pharmaceuticals and therefore functionally dissimilar to the assessee.
- E-Zest Solutions Ltd as it was rendering product development services and high-end services which would qualify as KPO services which were functionally dissimilar to the assessee.
- Infosys Technologies ltd as it had a huge brand influence, ownership of IP, intangibles and huge revenues from software products.
- KALS Information systems ltd was engaged in the business of development of software products as well as provision of training services. Further, the information obtained by the TPO u/s 133(6) was contrary to the annual report.
- Persistent Systems ltd as it was engaged in product development and product design services and segmental data were not available.
- Quintegra Solutions ltd as it was engaged in product engineering services which was functionally dissimilar to the software development service provided by the assessee. Further, it was engaged in proprietary software product and had substantial R&D activity resulting in creation of IPRs.
- Tata Elxsi Ltd as it was engaged in product development and design services and not purely software development services.
- Thirdware Solutions ltd as it derived revenue from sale of software products and was thus functionally dissimilar to the assessee.
- Wipro Ltd as it owned IPR, intangibles and was engaged both in software development and sale of product without segmental bifurcation.
- Lucid Software ltd was engaged in development of software products and thus was functionally dissimilar to the assessee.

DCIT vs Century Link Technologies India Pvt. Ltd- [TS-555-ITAT-2017(Bang)-TP]- IT(TP)A No. 292/8an9/2013 & CO No. 48/Bang/2016 dated 09.06.2017

30. The Tribunal held that the assessee engaged in the business of rendering software development services could not be compared to Infosys ltd as it was a giant company owning intangibles and had huge turnover.

Mercedes-Benz Research & Development India Private Limited(Formerly Daimler Chrysler Research & Technology India Pvt.Ltd vs ACIT-TS-529-ITAT-2017 dated 28.04.2017

31. The Tribunal held that the assessee engaged in providing software development services to its AE could not be compared to:-

- Bodhtree Consulting Ltd as it was a software product company and therefore functionally dissimilar to the assessee.
- Tata Elxsi Limited having turnover of Rs 378.43 crores as it failed the turnover filter of 10 times the assessee's turnover of Rs. 25.80 crores.

- Infosys Technologies Limited having turnover of Rs. 20264 crores as it failed the turnover filter of 10 times the assessee's turnover of Rs. 25.80 crores.
- Persistent systems Ltd having turnover of Rs. 519.69 crores as it failed the turnover filter of 10 times the assessee's turnover of Rs. 25.80 crores.
- KALS Information Systems Ltd having turnover of Rs. 2.14 crores as it failed turnover filter of 10 times the assessee's turnover of Rs. 25.80 crores.
- Sasken Communication technologies Ltd having turnover of Rs. 405.31 crores as it failed turnover filter of 10 times the assessee's turnover of Rs. 25.80 crores.
- Zylog Systems Ltd having turnover of Rs. 734.80 crores as it failed turnover filter of 10 times the assessee's turnover of Rs. 25.80 crores.
- Mindtree Ltd having turnover of Rs. 793.22 crores as it failed turnover filter of 10 times the assessee's turnover of Rs. 25.80 crores
- Larsen & Toubro Infotech Ltd having turnover of Rs. 1950.8 crores turnover filter of 10 times the assessee's turnover of Rs 25.80 crores.

ITO vs CSR India P Ltd-TS-570-ITAT-2017(Bang)-TP-IT(TP)A.58 & 241 Bang/2014 dated 06.04.2017

32. The Tribunal held that the assessee engaged in providing software development services to its AE could not be compared to:-

- Acropetal Technologies Ltd as it failed the Revenue filter of 75% applied by TPO.
- E-Zest Solutions Ltd as it was engaged in providing KPO services which was functionally dissimilar to the assessee.
- E-infochips Ltd as it earned revenue from software development and software products and segmental details were unavailable.
- Infosys Ltd as it had huge brand value, intangibles and thus not comparable to the assessee.
- Persistent Systems Solutions Ltd as it was engaged in diversified activities like licensing of products, royalty on sale of products as well as income from maintenance of contract etc and therefore functionally dissimilar to the assessee.
- Persistent Systems Ltd as it was engaged in diversified activities like licensing of products, royalty on sale of products as well as income from maintenance of contracts and thus functionally dissimilar to the assessee.
- Sasken Communications Technologies Ltd as it was engaged in software development and software products and segmental details were not available.
- Akshay Software Technologies Ltd as it was engaged in development of software and software products and segmental details were unavailable.

Further, it remitted the comparability of LGS Global Ltd to the file of AO/TPO for fresh consideration since the information obtained u/s 133(6) was different from what was given in the annual report.

DCIT vs LSI India Research Pvt Ltd-TS-571-ITAT-2017(bang)-TP dated 16.06.2017

33. The Tribunal held that the assessee engaged in the business of software development and quality assurance programme working on cutting edge technology could not be compared to:

- Bodhtree Consulting Ltd as it was engaged in development of software products and therefore functionally dissimilar to the assessee.
- Tata Elxsi Ltd as it was engaged in providing services such as embedded product design services, industrial design and engineering services and visual computing labs and system integration services segment and therefore functionally dissimilar to the assessee.
- Persistent systems Ltd as it was engaged in product designing services and development of software products and thus functionally dissimilar to the assessee.
- Infosys Tech. Ltd as the company was a giant in the area of software and assumed all risks leading to higher profits whereas assessee was a captive unit and assumed only limited risk.

Further, it held that the assessee's ITES segment could not be compared to:-

- Infosys BPO Ltd as the company had an extraordinary development of amalgamation during the year. Further, it was not engaged in direct activity of BPO but provided management services to BPO.

AOL Online India P Ltd-TS-583-ITAT-2017(Bang)-TP dated 09.06.2017

34. The Tribunal held that the assessee engaged in the business of providing software design and development services to its AE could not be compared to:

- Acropetal Technologies Ltd as its income from information technology services was Rs. 81.40 crores out of total income of Rs. 141.65 crores which was less than the 75% revenue filter applied by TPO.
- E-Infochips Ltd as it was engaged in the business of providing software development services, hardware maintenance, information technology and consultancy services which was functionally dissimilar to the assessee. Further, sale of products constituted 15% of total revenue and segmental details were unavailable.
- LGS Global Limited as it was engaged in providing software development services to financial and banking industry which was functionally dissimilar to the assessee.
- CG-VAK Software & Exports Limited as it was engaged in providing software development services to financial and banking industry which was functionally dissimilar to the assessee.

ACIT vs. Marvell India Pvt. Ltd-TS-592-ITAT-2017(Bang)-TP-IT(TP)A No. 384/bang/2016 and 471/bang/2016 dated 28.06.2017

35. Where the assessee had initially decided not to contest the addition proposed in the assessment order, but subsequently filed an appeal considering the fact that not filing an appeal before the Tribunal would prejudice its tax related matters pending adjudication before different forums for other years, the Tribunal condoned a delay of 148 days in filing appeal by assessee and held that, the issue permeated through all the years and if on account of one year, the adverse finding for that year should not prejudice the assessee's claim for other years. Further, noting that KALS information's software development expenditure included software consumption from inventory, it held that since it had inventory, it earned revenue from products and therefore excluded the company from the comparables while benchmarking the international transaction of the assessee **who was engaged in the business of software development services.**

Aircom International (India) Pvt. Ltd vs. DCIT-TS-399-ITAT-2017(DEL)-TP-ITA No.4403/Del/2012 dated 19.05.2017

36. The Tribunal held that the assessee engaged in the business of developing **software** and exporting software services could not be compared to :

- ICRA Techno Analytics Ltd as it was engaged in diversified activities of software development, consultancy, engineering services, web development and hosting and thus functionally dissimilar to the assessee.
- Infosys Ltd as it had a huge brand value, owned intangible assets and was engaged in diversified activities.
- Kals Information Systems Ltd as it had inventories in its balance sheet and was engaged in software products and therefore could not be compared with a pure software development service provider.
- Persistent Systems Ltd as it was engaged in diversified activities, earned income from outsourcing product development and its segmental details were unavailable.
- Sasken Communication Technologies as the company earned revenue from 3 segments-software services, software products and other services but segmental data and particularly operating margins were not available.
- Tata Elxsi as it was engaged in diversified activities of product design and innovation and thus functionally dissimilar to the assessee.
- Persistent Systems & Solutions Ltd as it earned its entire revenue from sale of software services and products and thus functionally dissimilar to the assessee engaged in software development services.
- Larsen & Toubro Ltd as it earned its entire revenue from software products and thus was functionally dissimilar to the assessee. Further, it had an RPT of 18.66% and failed the 15% RPT filter applied by TPO.

Further, noting that the DRP had suo motu applied a new onsite **revenue** filter while rejecting the comparable, the Tribunal held that the new filter should be adopted without any discrimination to all

comparables and accordingly, it remanded the comparability of R S Software (India) Ltd to the file of TPO.

DCIT vs ACI Worldwide Solutions P. Ltd (formerly known as Visual Web Solutions P. Ltd-TS-614-ITAT-2017(Bang)-TP-IT(TP)A no 262/bang/2015 dated 26.06.2017

37. The Tribunal held that the assessee engaged in the business of providing software development services could not be compared to:

- FCS Software Ltd as it was engaged in the business of software development and **IT Consulting services** and segmental results were unavailable.
- Infosys Technologies Ltd as it was a software giant and had huge turnover.
- L&T Infotech as it was engaged in software products and had high turnover.

DCIT vs Exfo Electro Optical Engg India Pvt. Ltd-TS-648-ITAT-2017-ITA No. 1347/PUN/2015 dated 07.07.2017

38. The Tribunal held that the assessee engaged in the business of providing software development services could not be compared to:

- E-Infochips Limited as it was engaged in the business of software development, hardware maintenance, information technology, consultancy and therefore was functionally dissimilar to the assessee.
- Sasken Communications as it earned revenue both from software products and services as against the assessee who provided only software services.
- E-zest Solution Limited as it was engaged in providing KPO services and therefore was functionally dissimilar to the assessee.
- Acropetal Technologies Limited having revenue from ITES of 56% as it failed the 75% revenue filter applied by TPO.
- L&T Infotech Limited as it failed the 15% RPT filter applied by TPO.
- Persistent System & Solution Ltd and Persistent Systems Ltd as it was engaged in diversified activities and earned revenue from licensing of products, royalty on sale of products as well as income from maintenance contract and therefore was functionally dissimilar to the assessee.
- Tata Elxsi Ltd as it failed the 75% export filter applied by TPO.

Further, in respect of sales and marketing support services, it held that the assessee could not be compared to:

- Asian Business Exhibition and Conferences limited as it was engaged in the organization of exhibitions and events as well as conducting conferences on behalf of the various clients for their various products and businesses vis-à-vis assessee which was a sales and marketing services to its AE.
- ICC International Agencies Limited as it derived income from trading activity and also maintained inventories and therefore was functionally dissimilar to the assessee.

Electronic Imaging India Pvt. Ltd vs DCIT-TS-659-ITAT-2017(Bang)-TP-ITA No. 1506/BANG/2015 dated 14.06.2017

39. The Tribunal held that the assessee engaged in the business of providing information technology enabled service (ITeS) could not be compared to:

- Accentia Technologies Limited as it was engaged in the business of providing high end medical transcription services & **had** substantial income from coding, therefore functionally dissimilar to the assessee.
- Microland Limited as thus it failed the 75% revenue filter applied by TPO, **as its** revenue from ITeS segment was only 20% of the company's total revenue.
- E4e Healthcare Business Services Pvt Ltd as the company had an outstanding on account of forward contracts of USD 11.85 million **and therefore the forward contract had influenced the margins of the company.** Further, there was huge difference in the amount of bad debts written off in the earlier years in comparison to the year under consideration.

Further, it included Microgenetic Systems Limited as it satisfied the employee cost filter applied by TPO and accordingly directed the AO/TPO to include the comparable.

Capital One Services India Pvt Ltd vs DCIT-TS-629-ITAT-2017(Bang)-TP-IT(TP)A No. 276/bang/2016 dated 28.06.2017

40. The Tribunal held that the assessee engaged in the business of providing software development services could not be compared to:

- Infosys BPO Ltd as it was engaged in the business of providing end to end outsourcing service, provider and therefore was functionally dissimilar to the assessee.
- Acropetal Technologies Ltd as it was engaged in providing high end knowledge processing services and therefore functionally dissimilar to the assessee.

Further, it remanded the comparability of Accentia Technologies Ltd to the file of TPO with a direction to examine the master service agreement of the assessee with its AE and compare the functions performed by the assessee with that of the comparable.

Zyme Solutions P. Ltd vs ACIT-TS-633-ITAT-2017(Bang)-TP- IT(TP)A No. 85/bang/2016 dated 26.07.2017

41. The Court, relying on the decision in assessee's own case for AY 2008-09 upheld the exclusion of Infosys Technologies Ltd, KALS information Systems, Wipro Ltd, Accentia technologies, Coral Hub and Eclerx Services and HCL Comnet Systems & Services on ground that (a) the companies were either functionally dissimilar to the assessee engaged in providing software development services (SDS), IT enabled services (ITES) and Market support services (MSS) or (b) the aforesaid companies had revenue from software products/KPO services for which no separate segments were available or (c) they owned branded/proprietary products or (d) their RPT to Sales exceeded the RPT filter of 15% applied by the TPO.

Pr. CIT Vs Avaya India Pvt. Ltd-TS-612-HC-2017(DEL)-TP-ITA no. 473/2017 dated 16.05.2017

42. The Tribunal held that Infosys BPO which had huge brand value, goodwill, huge economies of scale and wide geographical disposal of customers, could not be compared to the assessee, a captive service provider engaged in providing software development services. Further, it remitted the comparability of TCS Eserve, BNR Udyog Ltd and Jindal Intellicom Ltd to the file of DRP to decide the issue of availability of segmental data after affording an adequate opportunity of being heard to the assessee.

Indegene Pvt. Ltd (formerly known as Indegene Life Systems Pvt. Ltd) vs ACIT-TS-645-ITAT-2017(Bang)-TP-IT(TP)A no. 591/B/17 dated 02.08.2017

43. The Tribunal held that the assessee engaged in the business of providing software development services could not be compared to:

- Infosys Ltd as it was giant in the area of development of software having high profits.
- Tata Elxsi Ltd as it was engaged in the development of niche product and development services which was entirely different from pure software development company.

Further, it rejected assessee's plea to exclude the following companies as comparables:

- Aztec Software Systems Ltd and Megasoft Ltd on the ground that they had RPT in excess of 15% i.e., 17.78% and 18% as it satisfied the 25% RPT filter applied by TPO. It held that the assessee had not brought any evidence or reasons on record justifying application of 15% filter as against 25% applied by TPO.
- KALS Infosystems Ltd as it earned 75% of revenue from software services and therefore the assessee's contention that it was engaged in development of application software (software products) and training was not invalid.
- Accel Transmatics Ltd as it was engaged in both software products as well as software services and segmental details were clearly available contrary to assessee's claims.

Synopsys (India) Pvt. Ltd vs ACIT-TS-641-ITAT-2017(Bang)-TP-ITA No. 1169/bang/2010 dated 07.07.2017

44. The Tribunal held that the assessee engaged in the business of providing software development services could not be compared to:

- FCS Software Ltd as it had high turnover and it owned intangibles.

- Infosys Technologies Ltd as it was engaged in software products and had brand influence.
ACIT vs Synechron Technologies Pvt. Ltd-TS-646-ITAT-2017(PUN)-TP ITA No.536/PUN/2015 dated 16.06.2017

45. The Tribunal held that the assessee engaged in the business of providing software development services could not be compared to:

- Tata Elxsi Ltd as it was engaged in software development, product design services, innovative design engineering services and visual computing labs and therefore functionally dissimilar to the assessee.
- Infosys Ltd as it was a giant company engaged in software development and software product, owned intangibles and had huge revenue from software products.
- Persistent Systems as it was engaged in software products and services and segmental details were not available.

NMS Communications Pvt Ltd vs DCIT-TS-652-ITAT-2017(Bang)-TP-ITA No. 267/bang/2014 dated 14.07.2017

46. The Tribunal, in respect of assessee engaged in the business of software development, remitted the comparability of the following companies to the file of AO/TPO:

- Flextronics Ltd, iGate Global Solutions Ltd, Infosys Technologies Ltd, Mindtree Ltd, Persistent Systems, Sasken Communication technologies Ltd, Tata Elxsi Ltd, Wipro Ltd to decide whether turnover/size of the comparables affected their price/margins.
- KALS Information Ltd to verify whether the company was engaged in the business of product development and earned income from training/brand name.

Further, it held that the assessee could not be compared to:

- Celestial Biolabs Ltd as it was not a pure software development company and was engaged in research and development.
- Avani Cimcom Technologies Ltd as it was engaged in software services and products and segmental details were unavailable.
- Saksoft Ltd as it had RPT of 16% **which** failed the 15% RPT filter applied by TPO.

ITO vs Radisys India P. Ltd-TS-662-ITAT-2017(Bang)-TP-IT(TP)A no. 615/bang/2013 dated 24.08.2017

47. The Tribunal held that the assessee engaged in the business of providing software development services could not be compared to:

- Avani Cincom Technologies as it was engaged in providing software development and consulting IT services and therefore functionally dissimilar to the assessee.
- Bodhtree Consulting Ltd as the revenue recognition policy followed by it was different from the assessee.
- Infosys Technologies Ltd as it was a giant company in terms of risk profile, number of employees and ownership of brand.
- KALS Information Systems Ltd as it was engaged in providing software development as well as training services and accordingly was functionally dissimilar to the assessee.
- Persistent Systems Ltd as it was engaged in licensing of products.
- Quintegra Solutions Ltd as it had copyrights of Rs. 2.71 crores which was used in its business which made it functionally dissimilar to the assessee.
- Tata Elxsi as it was engaged in providing integrated hardware and packaged software solutions and innovation design and engineering solutions and therefore functionally dissimilar to the assessee.
- Thirdware Solutions Ltd as the company earned income from export of software products from SEZ/STPI units apart from sale of license.
- Wipro Ltd as it was operating as a full-fledged risk-taking entity and engaged in providing technology infrastructure services, testing services, package implementation and accordingly functionally dissimilar to the assessee.
- Akshay Software Technologies Ltd as it was engaged in sale of products and accordingly functionally dissimilar to the assessee.

Aircom International India Pvt. Ltd vs DyCIT (2017) 50 CCH 280 (DEL Trib.)-ITA no. 6402/del/2012 dated 02.08.2017

48. The Tribunal held that assessee engaged in the business of providing software development services could not be compared to:
- Acropetal Technologies Ltd as the revenue from IT services was Rs. 81.40 crores i.e. less than 75% of the total revenue of Rs. 141.65 crores.
 - E-Infochips Ltd as it was engaged in the business of providing software development services and sale of software products and also held inventories. Further segmental details were unavailable.
 - Infosys Ltd as it was engaged in the production of software products such as Finacle, I-smart etc and the company also incurred substantial expenditure on R&D, owned intangibles/patents and had tremendous brand value.
 - ICRA Techno Analytics Ltd as it was engaged in the business of providing software development, consultancy, licensing and sub-licensing, annual maintenance charges for software support and accordingly was functionally dissimilar to the assessee.

Zynga Game Network India Pvt Ltd vs. ACIT-TS-640-ITAT-2017(bang)-TP-IT(TP)A No. 360/bang/2016 dated 12.07.2017

49. The Tribunal remitted the comparability of the following companies while benchmarking the international transaction of the assessee engaged in the business of providing ITeS:
- Vishal Information Technologies Ltd as the assessee had not objected for its exclusion before TPO/CIT(A).
 - Wipro BPO Ltd as the CIT(A) had failed to comment on the functional dissimilarities raised by assessee.
 - Tricom India Ltd as though the assessee itself had selected the comparable, it had now sought its exclusion on the ground of functional dissimilarity, huge R&D activities and, abnormal growth and extraordinary events.

Global e-Business Operations Pvt. Ltd vs DCIT-TS-654-ITAT-2017(BANG)-TP-IT(TP)A no. 297/bang/2014 dated 26.07.2017

50. The Tribunal, while benchmarking the international transactions of the assessee i.e provision of software consulting services to its AE, allowed Revenue's plea for inclusion of the following companies:
- Exensys Software Solutions Ltd, iGate Global Solutions and Flextronics Ltd, L&T Infotech and Satyam Infotech Ltd as they would not be excluded merely because they earned/suffered abnormal profits/abnormal losses.
 - Bodhtree Consulting Ltd since it had only one segment of software development , therefore functionally comparable and could not be excluded merely on the ground of wide fluctuations in the margin.

DCIT vs. Oracle Solutions Services (India) Pvt. Ltd-TS-663-ITAT-2017(bang)-TP-IT(TP)A No. 880/bang/2013 dated 09.08.2017

51. The Tribunal held that the assessee engaged in the business of providing software design and development services could not be compared to:
- Tata Elxsi Limited as the company was functionally dissimilar to the assessee as it was not engaged solely in the business of software development services but also embedded product design, industrial services and engineering services which was functionally dissimilar to the assessee.
 - Infosys Ltd as it was a product company owning significant inventory, intangibles and had earned brand related profits and thus was functionally dissimilar to the assessee.

JCIT vs Rambus Chip Technologies (India) Pvt Ltd-TS-635-ITAT-2017(Bang)-TP- IT(TP)A No. 1091/BANG/2016 dated 28.07.2017

52. The Tribunal excluded E-clerx services Ltd as a comparable while benchmarking the transactions of the assessee (provision of ITeS to its AE), noting that the business model of Eclerx was significantly

different as it incurred more than 26% of the total employees and job work cost on outsourcing which was significantly different from the business model of the assessee.

Ariba India Pvt Ltd vs DCIT-TS-750-ITAT-2017(DEL)-TP-ITA No. 5201/del/2012 dated 25.09.2017

53. The Tribunal held that the assessee engaged in the business of providing ITeS and Software development services to its AE could not be compared to:

- Microgenetics Systems Ltd as it outsourced its business activity and therefore was functionally dissimilar to the assessee
- Infosys BPO Ltd as it was a giant company having brand value, diversified activity and therefore functionally dissimilar to the assessee.
- Eclerx Services Ltd as it was a part of the group of a large conglomerate and had huge turnover with global brands, operating on a large scale with lakhs of employees and therefore was functionally dissimilar to the assessee.
- TCS E-serve Ltd as it provides technology services involving software testing, verification and validation of software at the time of implementation and data centre management and therefore functionally dissimilar to the services provided by the assessee.
- Cosmic Global Ltd as it had a different working model as upto 41% of its expenses were incurred on sub-contracting which had a significant effect on margins.

Avineon India P Ltd vs DCIT-TS-679-ITAT-2017(HYD)-TP dated 07.07.2017

54. The Tribunal held that the assessee rendering software development services and Marketing support services to its AE could not be compared to

- Avani Cincom Technologies as it was engaged in the business of providing consulting IT services and therefore functionally dissimilar to the assessee.
- Bodhtree Consulting Ltd as it was engaged in providing end-to-end solutions and consultancy services and therefore was functionally dissimilar to the assessee. Further, it recognized revenue based on software developed and billed to clients as against assessee who recognized revenue over the contracted period of development on cost plus basis.
- Infosys Technologies Ltd as it was engaged in the business of providing services IT consulting and a giant in terms of risk profile, nature of services, number of employees, ownership of branded products and branded products and brand related profits etc vis-à-vis a captive unit providing software development services without any IP rights.
- KALS Information Systems Ltd as the annual report of the company showed that it was engaged in the business of providing software development services and software products. Further, it was also engaged in providing training to software professionals online and therefore was functionally dissimilar to the assessee.
- Persistent Systems Ltd as the company had developed software Products in the area of identity management contractors and therefore was functionally dissimilar to the assessee.
- Quintegra Solutions Ltd as it was utilizing its own software for providing software development services whereas the assessee did not have any software to be used in rendering software development services.
- Tata Elxsi as it offered integrated hardware and packaged software solutions which was functionally dissimilar to the assessee.
- Thirdware Solutions Ltd as it earned majority of the revenue from exports from SEZ/STPI units and sale of license making it incomparable to the assessee.
- Wipro Ltd as it was a full-fledged risk-taking entity and was engaged in providing technology infrastructure services, testing services, package implementation and had more than 82000 employees as well as its own R&D centre, making it functionally dissimilar to the assessee.
- Akshay Software Technologies Ltd as it was engaged in sale of products which was functionally dissimilar to the assessee.
- Nihar Info Global Ltd as it earned revenue from sale of products and therefore functionally dissimilar to the assessee.
- VMF Softech as it had outsourced its work and therefore functionally dissimilar to the assessee.

Aircom International (India) Pvt Ltd vs DCIT-TS-671-ITAT-2017(DEL)-TP-ITA No. 6402/del/2012 dated 02.08.2017

55. The Tribunal held that the assessee engaged in the business of providing human resource related services, payroll processing services, training and performance system data entry to its AE could not be compared to:

- TCS e-Serve Ltd as it had significant brand influence which affected the profitability.
- Infosys BPO Ltd as it had brand value and incurred substantial selling and marketing expenditure. Further, there was an event of acquisition in the relevant year and therefore, it could not be compared to the assessee.
- Excel Infoways Ltd as there was contradiction in the facts or data sourced from annual report and as per information gathered u/s 133(6).

Baxter India Pvt Ltd vs ACIT-TS-694-ITAT-2017(DEL)-TP-ITA No. 6158/del/2016 dated 24.08.2017

56. Where the Revenue filed an appeal before the High Court after a delay of 430 days, the Court refused to condone the delay and dismissed its appeal against Tribunal's order excluding 'Coral Hub Ltd', Infosys BPO and Wipro BPO from the list of comparables for ITeS provider. Following the decisions in the case of Rampgreen Solutions (P) Ltd [TS-387-HC-2015(DEL)-TP], Pentair Water India (P) Ltd [TS-566-HC-2015(BOM)-TP] and Agnity India Technologies Pvt. Ltd [TS-189-HC-2013(DEL)-TP] wherein exclusion of the comparables [Coral Hub (since its business model was based on outsourcing, Infosys BPO & Wipro BPO as it had huge turnover, economies of scale and brand value)] was upheld, it held that no substantial question of law arose and accordingly dismissed the department's appeal.

Pr.CIT vs New River Software Services Pvt. Ltd-TS-672-HC-2017(DEL)-TP-ITA No. 924/2016 dated 22.08.2017

57. The Court dismissed Revenue's appeal challenging Tribunal order on comparables selection dismissing Revenue's contention that the Tribunal order was perverse and incomplete as it dealt with only one of the several grounds considered by DRP in support of its conclusion. It noted that the Tribunal had directed inclusion of one loss making comparable which was functionally similar to the assessee and exclusion of 2 comparables on ground of functional differences and had given detailed reasons in support of its conclusion. Further, it noted that the memorandum of appeal filed by Revenue and the questions of law raised for its consideration did not mention a specific plea that the Tribunal order was perverse and observed that the ground of perversity was not to be casually urged and was to be supported by a proper pleading which again has to be on the basis of a detailed study of the impugned order of the Tribunal pointing out to High Court in what manner the Tribunal's conclusions can be said to be perverse, which was not done in the instant case. Accordingly, it held that no substantial question of law arose.

Pr.CIT vs Sojitz India Pvt Ltd-TS-704-HC-2017 (DEL)-TP-ITA No. 742/2017 dated 04.09.2017

58. The Tribunal held that the assessee engaged in the business of providing software development services to its AE could not be compared to:

- Bodhtree Consulting Limited as it was engaged in IT consulting and product engineering service and had a wide array of business activities like data warehousing and data management and therefore was functionally dissimilar to the assessee.
- Infosys Technologies Ltd as it had mega operations and significant assets and brand value and full-fledged risk-taking company and therefore was not comparable to the assessee.

Further, it remitted the comparability of Sonata Software Limited and Gold Stone Technologies Ltd to the file of TPO to determine the RPT percentage and segmental details.

Further, in respect of the ITES segment, the Tribunal held that assessee providing IT back office support services comprising of UNIX/windows administration and support, internal helpdesk services could not be compared to:

- Accentia Technologies Ltd as it was engaged in medical transcription, billing and collections, income from coding etc and segmental information for each stream was unavailable.
- E-Clerx Services Ltd as it was engaged in providing KPO services and had outsourced substantial work to third parties.

- Vishal Info Tech as it outsourcing charges of 90.57% which reflected that it had a different business model and it was also engaged in e-publishing services which was a KPO business model rendering it functionally dissimilar to the assessee.

Cadence Design Systems (India) Pvt Ltd vs DCIT-TS-716-ITAT-2017(DEL)-TP-ITA No. 2074/del/2014 dated 04.09.2017

59. The Tribunal held that the assessee a captive service provider engaged in the business of providing software research and development services to its AE could not be compared to:

- E-Infochips Ltd as it earned revenue from software development, hardware maintenance, information technology and consultancy services and no segmental data was available.
- Acropetal Technologies Ltd as it failed the 75% Revenue filter applied by TPO as the income from software development services [Rs. 81. 40 cr out of rs. 141.65 cr] was only 57.46% of the total revenue.

Microsoft Research Lab India Pvt. Ltd vs. ACIT-TS-701-ITAT-2017(Bang)-TP-IT(TP)A no. 115/bang/2016 dated 16.08.2017

60. The Tribunal held that the assessee engaged in the business of providing ITeS services could not be compared to:

- Accentia Technologies Ltd as it was operating under Software as a service model (SAAS) model and had developed its own software product for BPO services and therefore was functionally dissimilar to the assessee.
- Datamatics Financial as the export sale of 58.90% and failed the 75% export filter applied by TPO.
- ICRA online Ltd as it was engaged in KPO services and therefore was functionally dissimilar to the assessee.
- Infosys BPO Ltd as it was a giant company with the benefit of brand value and market leadership.
- E-clerx Services Limited as it was engaged in providing data analysis, operating management, audits, reconciliation, metrics management and operating services and therefore was functionally dissimilar to the assessee.

Further, it remitted the comparability of Jeevan Scientific Technology Limited to verify the segmental details submitted by the assessee as the annual report of the company showed that its revenue/income comprised of various operations and activities which included BPO, ERP project implementation, corporate and student training and income from study centre and the assessee had contended that segmental details were available which were not accepted by TPO.

ITO vs Arctern Consulting (P) ltd-TS-717-ITAT-2017(bang)-TP-I.T. (T.P) A. No.195/Bang/2015 dated 11.08.2017

61. The Tribunal held that the assessee engaged in providing software development services could not be compared to Persistent Systems Ltd as it was engaged in providing software development services as well as manufacture and sale of software products and therefore was functionally dissimilar to the assessee. Further, it included E-Zest Solutions Ltd as it was engaged in providing development and design services, software product testing, maintenance and support and license management and the assessee had not provided any document to show that the comparable owned any intangible assets or had any inventory. It remitted the comparability of E-Infochips Bangalore Ltd and Mindtree Limited to the file of AO to verify the functional comparability vis a vis the assessee and existence of peculiar circumstances respectively.

Conexant Systems Private Limited vs DCIT-TS-681-ITAT-2017(HYD)-TP-ITA No.264/Hyd/2015 dated 23.08.2017

62. The Tribunal held that the assessee engaged in the business of sale of user license of enterprise application to external parties, software development, software related services and back office services to its AE could not be compared to:

- Accentia Technologies Limited as it was engaged in e-prescription and document management services which were KPO services which was functionally dissimilar to the assessee
- Acropetal Technologies Limited as it was engaged in providing engineering design services and therefore was functionally dissimilar to the assessee.
- eClerx Services Limited as it was engaged in providing KPO services and therefore was functionally dissimilar to the assessee.

- TCS e-serve Limited as it was engaged in providing technical services comprising of software testing, verification and validation of software at the time of implementation and data centre service management activities which was functionally dissimilar to the assessee.
- Infosys BPO Limited as it was a giant company with high risk profile and therefore could not be compared with the assessee having low risk profile.

Further, it included E4e Healthcare Business Services Private Limited to the final list of comparables as the assessee had no objection to the inclusion of this company provided the correct margin was taken and accordingly directed the AO to include this company the correct margin.

DCIT vs Infor (India) Private Limited-TS-682-ITAT-2017(Hyd)-TP-ITA.No.113/Hyd/2016 dated 07.07.2017

63. The Tribunal held the assessee engaged in the business of providing software development services to its AE could not be compared to:

- Celestial Biolabs Ltd as it was engaged in providing clinical research and manufacture of bio products and other products rendering it functionally dissimilar to the assessee.
- Avani Cimcon Technologies Ltd as it was earning revenue from software products as well as services and its segmental details were unavailable.

ITO vs. Radisys India P Ltd-TS-747-ITAT-2017(bang)-TP-I.T(TP).A No.615/Bang/2013 dated 24.09.2017

64. The Tribunal held that assessee engaged in the business of providing IT related services could not be compared to:

- Celestial Labs as it was engaged in providing pure software development services and R&D and therefore was functionally dissimilar to the assessee.
- Avani Cimcon Technologies as it was earning revenue from software products along with IT services and its segmental details were unavailable.

Further, it remitted the comparability of Flextronics Ltd, iGate Global Solutions Ltd, Infosys Technologies Ltd, Mindtree Ltd, Persistent Systems Ltd, Sasken Communication Technologies Ltd, Tata Elxsi Ltd, Wipro Ltd to the file of AO/TPO to verify whether the turnover or size of the said comparables affected their price/margins. It also remitted the comparability of KALS Information Ltd to the file of AO/TPO for computation of margin and to examine whether it was engaged in product development and earned income from training/brand name.

Radisys India P Ltd [TS-662-ITAT-2017(Bang)-TP-I.T(TP).A No.615/Bang/2013 Dated 24.08.2017

65. The Tribunal held that the assessee engaged in the business of software development services could not be compared to:

- E-Infochips Limited as it earned revenue from software development, hardware maintenance, information technology, consultancy without adequate segmental data rendering it functionally dissimilar to the assessee.
- Sasken Communication Technologies Ltd as the company was engaged in providing software services and software products and segmental details were unavailable.
- E-Zest Solution Ltd as it was engaged in providing KPO services which was not functionally comparable to the assessee.
- Acropetal Technologies Ltd as its income from ITES was less than 75% of its total income failing the filter applied by TPO.
- L&T Infotech Limited as it had an RPT of 18.66% and failed the 15% RPT filter applied by TPO.
- Persistent System Solution Ltd as it was engaged in providing licensing of products and earned income from maintenance contract and therefore was functionally dissimilar to the assessee.
- Tata Elxsi Limited as its export revenue to total revenue was 73.30% which failed the 75% filter applied by TPO.
- ICRA technology Analytics Limited as it was engaged in providing KPO services rendering it functionally dissimilar to the assessee.
- Infosys Technologies Limited as it had huge brand value, intangibles and huge turnover and therefore could not be compared to the assessee.

Electronic Imaging India Pvt Ltd vs DCIT-TS-659-ITAT-2017(Bang)-TP-ITA No. 1506 / bang / 2015 dated 14.07.2017

66. The Tribunal held that the assessee a captive software development services provider could not be compared to:

- ICRA Techno Analytics Ltd as it had an RPT of 20.94% and failed the 15% RPT filter applied by TPO.
- Infosys Ltd as it had huge brand value, substantial intangible asset and bargaining power and there could not be compared to a captive service provider.
- KALS Information Systems Ltd as it was engaged in the business of software products and had huge inventory rendering it functionally dissimilar to the assessee.
- Persistent Systems Ltd as it was engaged in diversified activities and earned revenue from licensing of products, royalty on sale of products as well as income from maintenance contract.
- Sasken Communication Technologies Ltd as it had 3 revenue segments viz., software services, software products and other services without adequate segmental details.
- Tata Elxsi Ltd as it was engaged in providing diversified services like product design, innovation design services, visual computing labs rendering it incomparable to the assessee.

Further, in respect of sales and marketing segment, it held that the assessee could not be compared to:

- HCCA Business Services Pvt. Ltd as it was engaged in providing payroll process services which was functionally dissimilar.
- Killick Agencies & Marketing Ltd as it was acting as an agent for various foreign principals for sale of dredgers, dredging equipment, steerable rudder propulsions and other equipment and machineries rendering it functionally dissimilar to the assessee.

AMD India Pvt Ltd vs DCIT-TS-702-ITAT-2017(Bang)-TP-IT(TP)A No.242 & 204 / B / 15 dated 24.08.2017

67. The Tribunal held that assessee engaged in providing software development services to its AEs could not be compared to:

- KALS Information Systems Limited as it was engaged in development of software products and services and therefore could not be compared to a pure software development service provider.
- Bodhtree Consulting Limited as it was engaged in business of software products and providing open and end to end web solutions software consultancy and design and development of software rendering it functionally dissimilar to the assessee.
- Tata Elxsi Limited as it was engaged in software development services comprising of embedded product design services, industrial design and engineering services and visual computing labs and system integration services and segmental details were unavailable.
- Persistent Systems Limited as it was engaged in product designing and software product development. Further it had a research centre for development informatics, specially life time product, life cycle services, medical research, chemistry and computer science rendering it functionally dissimilar to the assessee.
- Infosys Limited as it owned significant intangibles, brand influence and had huge revenue from software products.

Kodiak Networks India Pvt Ltd vs DCIT-TS-753-ITAT-2017(Bang)-TP-IT(TP)A No. 296 / bang / 2014 dated 08.09.2017

68. The Tribunal had excluded i) Infosys Technologies as it was a giant risk taking company with significant intangibles and assets, ii) KALS Information Systems as it derived income from software products and was also engaged in executing end to end project in the software development cycle in the Software development segment and iii) Vishal Information technology as it outsourced most of its work to vendors/service providers. The Court held that since the Tribunal had assigned clear reasons for exclusion and no substantial question of law arose. Accordingly, it dismissed the Revenue's appeal.

CIT (International Taxation) vs Ut Starcom Inc (India Branch)-TS-758-HC-2017(DEL)-TP-ITA 767/2017 dated 25.09.2017

69. The Tribunal held that the assessee engaged in providing designing and development softwares to its AE could not be compared to:

- KALS Information Systems Ltd as it was engaged in product development and segmental details were unavailable.

- Helios & Matheson Information Technology Ltd as it was engaged in rendering ITES including BPO services, offshore delivery, project management services and therefore was functionally dissimilar to the assessee.
- FCS Software Solution Ltd as it was engaged in providing software development services and application support services and infrastructure management services and segmental details were unavailable.

Further, in respect of ITES services segment, it held that the assessee could not be compared to:

- Accentia Technologies Ltd as it had an extraordinary event of merger/acquisition which had an impact on the financial results of the company.
- Coral Hubs Ltd as it was engaged in providing diversified activities like custom application development services and ITES without adequate segmental data rendering it incomparable to the assessee.

PTC Software (India) Private Limited vs Dar ACIT-TS-746-ITAT-2017(PUN)-TP-ITA no. 2546/PUN/2012 dated 11.09.2017

70. The Tribunal held that the assessee engaged in the business of IT enabled services could not be compared to:

- E-Clerx services Ltd as it was engaged in providing KPO services and therefore was functionally dissimilar to the assessee.
- Moldteck Technologies Ltd as it was engaged in providing highly technical and specialized engineering services which was in the category of KPO and accordingly functionally dissimilar to the assessee.
- Vishal Information Technologies Ltd as it outsourced the work to third party vendors and therefore functionally dissimilar to the assessee.
- Infosys BPO Ltd and Wipro Ltd as they were giant companies, owning intangibles, brand value and therefore functionally dissimilar to the assessee.

Hinduja Ventures Limited (Formerly known as HTMT Ltd.) vs DCIT & others-TS-685-ITAT-2017(Mum)-TP-ITA 4503/Mum/2012 dated 14.07.2017

Support Services

71. The Tribunal held that the assessee engaged in the business of provision of finance/IT back office support services could not be compared to:

- E-clerx Service Limited as it outsourced most of its services. Further, it provided services through two business units viz., financial services including consulting business analysis and solution testing and sales and marketing services which also included web content management & merchandising execution, web analytics which were high end KPO services and segmental details for the same were not available.
- TCS E-serve Limited as it was a subsidiary of Tata Consultancy services limited having an inherent element of very high brand value associated with it. Further, it was engaged in rendering services broadly comprising of transaction processing and technical services including software testing, verification and validation for which no segmental bifurcation was available.
- ICRA Technology Analytics Ltd as it was engaged in the business of software development and consultancy, engineering services, web development and providing business analytic and business process outsourcing and thus functionally dissimilar to the assessee.
- Accentia Technologies Private Limited as it had acquired a software development company during the year due to which its revenue had significantly increased affecting the pricing and comparability of the company vis-à-vis the assessee.

BC Management Services Pvt Ltd vs DCIT-TS-438-ITAT-2017(DEL)-TP-ITA No.6134/del/2015, 5839/del/2015 and 6572/del/2016 dated 25.05.2017

72. The Tribunal held that the assessee engaged in the business of providing back office processing services to AE could not be compared to:

- Tricon India Limited as it had developed a unique software to provide BPO services to customers and thus was functionally dissimilar to the assessee.

- Fortune Infotech Limited as it had developed unique software from which it would derive substantial benefits/advantages and therefore could not be compared to the assessee which was providing pure call centre services.
- Wipro BPO Solution Ltd as it had unique intangibles considering the influence of the wipro brand. Further, it remitted the comparability of Ultramarine & Pigments Ltd, Spanco Telesystems & Solutions Ltd, Allsec Technologies Ltd to the file of AO/TPO as they were functionally dissimilar to the assessee and this issue had not been examined by the AO/TPO.

Siemens BPO Services Pvt. Ltd vs DCIT-TS-530-ITAT-2017(BANG)-TP

73. The Tribunal held that the assessee engaged in providing back office service in the ITeS sector could not be compared to:-

- Infosys BPO Ltd as it had an extraordinary event of amalgamation during the year. Further, it earned revenue from providing business process management services to other organizations engaged in outsourcing business services.
- Accentia technologies ltd as it was engaged in diversified activity of medical activity of medical transcription, medical coding, billing, receivable management which were functionally different from the service of contract center service provided by assessee.
- Cosmic Global ltd as it was engaged in providing service of medical transcription and consultancy services, translation services and accounts of BPO and therefore functionally dissimilar to the assessee.

Business Process Outsourcing (India) Pvt Ltd vs DCIT-TS-577-ITAT-2017(Bang)-TP dated 09.06.2017

74. The Tribunal held that the assessee engaged in the business of providing shared services (ITeS) to its AE could not be compared to:

- Accentia Technologies Ltd as there was an extraordinary event of merger and amalgamation during the year and thus could not be compared to the assessee.
- Infosys BPO Ltd as it was engaged in the business of providing software products apart from software services and therefore functionally dissimilar to the assessee. Further, it owned intangible assets and had a brand value commanding premium pricing.

Flextronics Technologies India Pvt Ltd vs DCIT-TS-588-ITAT-2017(BANG)-TP-ITA No. 649/bang/2015 and Cr. objn IT(TP)A No. 208/bang/2015 dated 21.06.2017

75. The Court, noting Tribunal's finding that Cosmic Global Ltd's nature of business was distinct from the one carried out by assessee engaged in the business of providing VISA processing services to its AE dismissed Revenue's appeal in the absence of substantial question of law. The Tribunal had remanded the matter back to the AO/TPO for determining the functional comparability of Cosmic Global vis-à-vis the assessee. The Revenue had contended before the Court that since the company was selected by the assessee as a comparable, it was not open for the assessee to deviate from the same.

VFS Global Services Pvt Ltd-TS-595-HC-2017(BOM)-TP-ITA No 336 of 2015 dated 19.07.2017

76. The Tribunal held that the assessee engaged in providing back office services to AE for AY 2010-11 could not be compared to:-

- Accentia Technologies Ltd as it was engaged in the business of medical transcription (which required employment of medical professionals and medical coding) as it was functionally dissimilar to the assessee.
- EClerx Services Ltd as it was a KPO company providing data analytics and data process solutions to global clients and it also provided end to end support through trade life cycle including trade confirmations and settlements and therefore functionally dissimilar to the assessee.
- ICRA Techno Analytics Ltd as it was engaged in business intelligence and analytics space and thus functionally dissimilar to assessee's back office services.
- Infosys BPO Ltd-relying on the decision in the case of Actis Global Service Pvt Ltd[TS-417-HC-2017(Del)-TP], it held that the size of the company was 20 times the assessee's size and therefore not comparable.
- TCS eServe International Ltd as it was engaged in the business of software testing, verification and validation of software and thus functionally dissimilar to the assessee.

Further, it remitted the comparability of R Systems Pvt Ltd and Omega Helthcare Ltd to the file of AO/TPO on the ground that R systems pvt ltd followed a different financial year than the assessee and Omega Healthcare Ltd's annual report which was not available in the public domain earlier was now available.

Further, it included e4e Healthcare Ltd as comparable **as it** was selected by assessee itself and it did not provide any reasons for withdrawing of the comparable at this stage.

Evalueserve SEZ (Gurgaon) Private Ltd vs ACIT-TS-564-ITAT-2017(DEL)-TP-ITA No. 1467 (Delhi) of 2017 dated 30.06.2017

77. Where the assessee was engaged in providing management of day-to day accounting functions, the Tribunal referring to the definition of ITeS under Safe Harbour Rules held that support services were primarily within the ambit of ITeS and if the core function was only to provide support services merely because high skilled personnel were involved, it could not be classified as high-end services. Accordingly, the Tribunal held that assessee's operational outsourcing services to AE was low-end ITeS for AY 2012-13. Based on the above ruling the Tribunal held that the assessee could not be compared to:

- Eclerx Services Ltd as it was engaged in providing KPO services which could not be compared to low end services rendered by assessee.
- Infosys BPO Ltd as it had acquired company engaged in providing high end services. Further, it had incurred high AMP expenditure and had brand leverage and presence of intangibles.
- BNR Udyog Ltd having RPT of 28.08% I.E >25% filter applied by TPO.
- TCS E-serve Limited as it was engaged in software testing and validation activity which was functionally dissimilar to the assessee.

Further, it remitted the comparability of R systems International Ltd and Caliber Point Business Solutions Ltd to verify if the quarterly audited statements were available.

IHG IT Services (India) Pvt. Ltd vs. DCIT-TS-638-ITAT-2017(DEL)-TP-ITA no. 397/del/2017 dated 30.06.2017

78. The Apex Court admitted Revenue's SLP challenging Delhi HC ruling in the case of Actis Global Services Pvt. Ltd. The High Court had declined to interfere with the Tribunal ruling on comparability analysis and held that Infosys BPO and Eclerx services ltd were incomparable to assessee engaged in providing KPO services.

Pr.CIT vs Actis Global Services Pvt Ltd-TS-619-SC-2017-TP-6657/2017-ITA No. 2280/mum/2017 dated 04.08.2017

79. The Tribunal remitted the TP-issues in respect of marketing support services provided by assessee to AE. Noting that the comparables selected by TPO were well established and the assessee was in the initial stage of operation, the Tribunal directed the TPO to make adjustments to the operating expenses in order to give due leverage to the contribution of income to the fixed cost so as to bring it at the level playing field with the comparables. Further, observing that assessee had pointed out specific instances for allowing capacity underutilization adjustment which were not considered by CIT(A) & also furnished certain information on comparables which were not appreciated by CIT(A) in right perspective, it remitted the matter back to the file of AO/TPO for fresh adjudication.

Hitachi High-Technologies (Singapore) Pte Ltd-India BO vs. DDIT-TS-705-ITAT-2017(DEL)-TP-ITA No. 3333/del/2014 dated 28.08.2017

80. The Tribunal held that the assessee engaged in providing of BPO services (online recruitment services) to its AE could not be compared to:

- Accentia Technologies Ltd as it had a different strategy of growth by way of acquisitions and no segmental data was available.
- Eclerx Services Ltd as it was engaged in KPO services and therefore was functionally dissimilar to the assessee.
- Infosys BPO Ltd as it was a giant company and had a huge brand value making it incomparable to the assessee.

- TCS E Serve Ltd as it was engaged in providing technical services involving software testing, verification and validation of software at the time of implementation and data centre management activities and therefore was functionally dissimilar to the assessee.
- Crossdomain Solutions Ltd it was engaged in market research and analysis and IT services which included software development and maintenance and no segmental information was available.

ACIT & others vs. Monster.com-TS-718-ITAT-2017(HYD)-TP- ITA No. 1425 / H / 15 dated 30.08.2017

81. The Tribunal remitted the following comparables to the file of AO in respect of assessee engaged in providing customized and development support services to its AEs:

- Larsen & Toubro Infotech Limited as the functional comparability of this company required adjudication at the DRP level.
- Marveric Systems Limited as the DRP had restored this company holding that it failed the export earning filter of 75%. However, in the final order, AO included this company and granted part relief to the assessee.

Accordingly, it remitted the entire issue to the file of DRP and directed it to give a specific finding on the functional comparability of each company against which the assessee had contested.

Alten Calsoft Labs (India) Pvt Ltd vs DCIT -TS-735-ITAT-2017(Bang)-TP-I.T.,(T.P) A. No.403/Bang/2017 DATED 31.08.2017

82. Where the assessee was engaged in providing business process and back office support services to its AE, the Tribunal directed the TPO to exclude Eclerx Services Ltd as a comparable since it was engaged in providing a diverse range of services such as financial services, sales and marketing support services without adequate segmental data.

Fractal Analytics Private Limited vs DCIT-TS-744-ITAT-2017(MUM)-TP-ITA No.1024/Mum/2017 dated 21.09.2017

83. The Tribunal held that the assessee engaged in providing Technical support services to its AE could not be compared to:

- HSCC (India) Ltd as it was a government company and its related party transactions were more than 25%
- Mitcon Consultancy & Engg. Services Ltd and Rites Ltd as both the companies had multi-dimensional functionality and RPT was 100%.

Granite Services International P Ltd vs ACIT-TS-731-ITAT-2017(DEL)-TP- ITA No. 532/Del/2016 dated 12.09.2017

Distribution / Sale

84. The Court dismissed Revenue's appeal against Tribunal's exclusion of comparables in the absence of substantial question of law as the Tribunal had assigned clear reasons for exclusion of comparables. The TPO had rejected the comparables adopted by assessee and adopted new set of comparables. The Tribunal held that the following companies could not be considered as a comparable to the assessee engaged in the business of distribution and sale of digital switching equipment, cellular exchange equipment and other telecommunication equipment provided contract software development (CSD) services.

- E-Infochips Ltd. on the ground that it had income from software products and services and there was no segmental data available.
- Larsen &Toubro Ltd. on the ground that it had income from software development services and earned revenue from licensing of products
- Persistent Systems Ltd. on the ground that it was engaged in diversified services such as software consultancy, software product development and system integration services.
- Infosys Ltd. on the ground that it was engaged in providing software consulting and products.
- Zylog Ltd. on the ground that this company derived revenue from consultancy services,project and e Governance projects.

Alcatel Lucent India Ltd-TS-585-HC-2017(DEL)-TP-ITA No.515/2017 dated 18.07.2017

85. The Tribunal, ruling on selection of comparables in respect of assessee engaged in the business of trading of roller, chemical and blanket testing equipments, remitted the comparability of the Tirupati Incs Ltd and ITD imagnetic ltd to the file of AO/TPO directing it to verify whether the said companies were engaged in the business of trading and exclude it if it was confirmed that it was engaged in manufacturing operations.

Boettcher India Pvt. Ltd vs ACIT-TS-760-ITAT-2017(DEL)-TP-ITA No. 6610/Del/2016 dated 29.09.2017

Investment Advisory services

86. Where the Tribunal had excluded 3 comparables on the ground that they were engaged in debt syndication, debt financing, IPO advisory etc, the Court set aside Tribunal's order on comparable selection for benchmarking the international transactions of the assessee providing non-binding investment advisory services. It noted that the Tribunal had gone by usage of terms such as debt syndication, debt financing, IPO advisory etc appearing in annual reports of the 3 contested comparables (merchant bankers) to be functionally dissimilar. Observing that the services of the assessee could not be termed as that of merchant banking though there may be some overlap in the advisory segment of the services provided by merchant bankers, it restored the comparability of 3 companies back to CIT(A).

Avenue Asia Advisors Pvt. Limited vs. DCIT-TS-737-HC-2017(DEL)-TP ITA No. 350 / 2016 dated 18.09.2017

87. The Tribunal held that the assessee engaged in the business of providing non-binding investment advisory services to its AE could not be compared to:

- Eclerx Services Limited as it was engaged in providing data analytics and risk management services rendering it functionally dissimilar to the assessee.
- Mold-Tek Technologies limited as it was engaged in providing engineering design services and therefore was functionally incomparable to the assessee.
- Acropetal Technologies as it was engaged in providing engineering design services and information technologies services without adequate segmental data rendering it functionally dissimilar to the assessee.
- Crossdomain Solutions Limited as it was engaged in providing data processing services and insurance claim processing and therefore was functionally not comparable to the assessee.

Apax Partners India Advisors Private Limited vs DCIT-TS-743-ITAT-2017(MUM)-TP-ITA No.628/Mum/2013 dated 12.09.2017

Manufacturing

88. The Tribunal remitted the issue in the case of assessee's contract manufacturing & software services segments to the file of AO/TPO in respect of the following comparables:

- Aztech Software Ltd, Accel Transmatics Limited, Megasoft Limited where the assessee contended that the companies failed the RPT filter of 15% as it had an RPT of 17.35%, 30.76% and 52.74% respectively. The Tribunal questioned assessee about the correctness of RPT% submitted vis-à-vis TPO's order and accordingly remitted the matter to the AO/TPO for fresh decision.
- Infosys Technologies Limited, KALS Information Systems Ltd and Tata Elxsi Ltd as the assessee contended that these companies should be excluded on grounds of functional dissimilarity. Accordingly, Tribunal remitted the matter back to the AO/TPO for fresh consideration.

GE Medicals Systems India Pvt ltd vs DCIT-TS-587-ITAT-2017(BANG)-TP-ITA no. 1414(bang)2010 dated 23.06.2017

89. The Tribunal held that the assessee engaged in manufacturing of woodworking machinery and spare parts could not be compared to:

- Lakshmi Precision Tools Ltd as it had RPT of 74.41% which failed the RPT filter of 15% applied by TPO.

- Guindy Machine Tools Ltd, Lykot Hitech Toolrooms Ltd, Kiran Machine Tools Ltd and Kulkarni Power tools Ltd as they were engaged in the business of software services and thus functionally dissimilar to the assessee engaged in the business of manufacturing machinery.

Biesse Manufacturing Company Private Limited vs DCIT-TS-601-ITAT-2017(BANG)-TP-IT(TP)A No. 755/bang/2017 dated 07.07.2017

Research Services

90. The Tribunal held that the assessee engaged in providing R&D services to its AE could not be compared to:-

- Alphageo India Limited as it had not undertaken any R&D activities during the year and therefore was not comparable to the assessee.
- Vimta Labs as it was engaged in wide spectrum of services (focusing on food, water, drugs, clinical diagnostics and environment) which was functionally dissimilar to the assessee.
- Geologing Industries Limited as it was engaged in mudlogging services, drilling data monitoring services and wireline services and thus functionally dissimilar to the assessee.

FMC India Private Limited vs DCIT-TS-573-ITAT-2017(Bang)-TP-dated 23.06.2017

91. The Court noting that the Tribunal had excluded Celestial Labs as a comparable in respect of assessee providing contract research and testing services to AE on grounds on functional dissimilarity as the said company was engaged in providing diversified services such as rendering IT services encompassing application development and maintenance, production support, EERP, data warehousing, SAP implementation and was also engaged into manufacturing and trading of products such as ERP package for manufacturing and had a product 'Sarjivani' which is a portal for live ayurvedic consultation, held that no substantial question of law arose and accordingly dismissed Revenue's appeal

Pr.CIT vs Tevapharm India Pvt Ltd-TS-730-HC-2017(DEL)-TP-ITA No 816 / 2017 dated 19.09.2017

General

92. The Tribunal remitted the comparability of the following companies to the file of the AO/TPO for fresh consideration:

- Infosys Ltd, L&T Infotech Ltd, Midntree Ltd, R S Software Ltd, Tata Elxsi Ltd. Persistent Tech Ltd, Sasken Communications Ltd relying on the decision in the case of Chryscapital Investment Advisors (india) Pvt Ltd [TS-173-HC-2015(DEL)-TP] wherein it was held that before excluding a comparable based on turnover filter, some exercise had to be done by the AO/TPO to find out whether such a high or low turnover had any effect on the price and whether reasonable adjustment could be made for such difference.
- Acropetal Tech Ltd- the Revenue had sought exclusion of this company on the basis that it did not qualify employee cost filter which was not applied to other companies. Accordingly, the Tribunal remanded its comparability for fresh consideration and directed the AO/TPO to apply the filter to other comparables as well.

ITO vs Cenduit India Services Pvt. Ltd-TS-576-ITAT-2017(BANG)-TP dated 07.07.2017

93. Where the assessee did not have any objection to Revenue's ground for excluding the two comparables viz. Thinksoft Global and FCS Software for benchmarking software development services, the Tribunal allowed the exclusion of the said two comparables for benchmarking software development services provided by the assessee to its AE.

DCIT vs Yodlee Infotech P Ltd-TS-497-ITAT-2017(Bang)-TP-IT(TP)A.83/B/2014 & CO.70/B/2016 dated 05.05.2017

94. The Tribunal set aside TP issues relating to ALP determination in respect of software development services rendered to AE for AY 2008-09. Out of 20 comparables selected by TPO, CIT(A) had rejected 7 comparables by applying Rs 1-200 cr turnover filter, 1 comparable on the ground of high profit margin and 2 on the grounds of functional dissimilarity. Rejecting Rs 1-200 cr turnover filter applied by CIT(A), the Tribunal held that a turnover filter of 1-200 cr was not proper as it gave

unacceptable results and a tolerance range of turnover as ten times of turnover of the tested party was an appropriate filter. Regarding the ground of high profit margin, it held that high profit margin or loss could not be a ground or criteria for exclusion or inclusion of comparable, however, abnormal circumstances or extraordinary events could be a reason for exclusion but not high profit margin alone. Further, observing that the CIT(A) had not examined the functional comparability of 8 out of 10 comparables rejected by it, the Tribunal set aside the entire issue of determination of arm's length price and consequential transfer pricing adjustment to the file of CIT(A) for fresh determination of the functional comparability of the companies objected by assessee.

Huawei Technologies India Pvt. Ltd vs ITO-TS-526-ITAT-2017(Bang)-TP-IT(TP)A No.395 and 459/bang/2013 dated 31.05.2017

95. The Tribunal remanded the benchmarking of assessee's international transactions relating to provision of software development & back office processing (ITeS) services. The TPO had rejected assessee's TP study report including adoption of comparable uncontrolled price (CUP) method as MAM and undertook FAR analysis of comparables in respect of software development services segment but made a TP-adjustment in respect of ITeS segment. Noting that there was no finding of TPO on software segment and no FAR analysis of comparables in ITeS segment, the Tribunal held that the order of the TPO was not sustainable and accordingly remanded the matter back for fresh benchmarking analysis in both the segments after affording an opportunity of being heard to the assessee.

First Advantage Global Operating Center Pvt Ltd (formerly known as First Advantage Offshore Services Pvt Ltd) vs DCIT-TS0548-ITAT-2017(Bang)-TP dated 24.05.2017

96. The Tribunal, noting that wrong filters for related party transactions i.e. 0% and turnover i.e. 1-200 crores were adopted by DRP in respect of assessee engaged in providing software development and related services, held that the Tribunal had consistently adopted 15% RPT filter and 1/10th or 10 times of assessee's turnover as filter and accordingly remitted the TP-issue back to the AO/TPO for fresh consideration after applying proper filters.

L.G Soft India Pvt. Ltd vs. DCIT- [TS-553-ITAT-2017(Bang)-TP]- IT(TP)A Nos.463 & 516(B)/2015 & CO No. 140(B)/2015 dated 09.06.2017

97. The Tribunal noting that various benches of Tribunal were consistently adopting 15% RPT filter, set aside CIT(A)'s order adopting 0% RPT filter for selection of comparables for assessee engaged in providing software development services and directed the CIT(A) to obtain remand report from the AO/TPO and then examine and decide the entire TP matter including other objections of the assessee in respect of comparables which were excluded applying 0% RPT filter.

DCIT vs Though Works Technologies (I) Pvt Ltd-TS-542-ITAT-2017(Bang)-TP- IT(TP)A No.31(B) & CO No.31(B)2012 dated 16.06.2017

98. The Tribunal noting that the TPO had applied filter of commission and related revenue not being less than 75% of the total revenue, excluded Priya International and ICC International Agencies Ltd as comparable for assessee's sales and marketing support services provided during AY 2007-08 on the ground that Priya International Ltd had 23% commission income while ICC International Agencies Ltd had commission income of 59% which did not meet the filter adopted by TPO.

Texas Instruments (India) Private Limited vs ACIT-[TS-544-ITAT-2017(Bang)-TP]- IT(TP)A No. 1032/Bang/2011 dated 16.06.2017

99. Noting that the DRP had excluded Jeevan Scientific Technology by applying employee cost filter on its own account, the Tribunal accepted assessee's & Revenue's submission that employee cost filter should not have been applied to this company alone but to all comparables. Further, by way of additional grounds, assessee requested for rejection of comparable based on 10 times turnover range. Relying on the decision in the case of Chryscapital Investment Advisors (India) Pvt Ltd[TS-173-HC-2015(DEL)-TP] held that huge profit or a huge turnover, ipso facto could not lead to exclusion of comparable and the TPO first had to be satisfied that such differences did not materially affect the price or cost. Accordingly, it remitted the matter back to the AO/TPO for fresh consideration.

Dell International Services India Pvt Ltd vs JCIT-TS-575-ITAT-2017(Bang)-TP-IT (TP) A No.636 (Bang) 2016 dated 28.06.2017

100. Where the CIT(A) had excluded companies by applying the Rs. 1-200 crores turnover filter without examining the functional differences of these companies, the Tribunal relying on the decision in the case of Chryscapital Investment advisors (India) (P) Ltd and held that mere high profit or loss could not be basis for comparables exclusion and analysis under rule 10B(3) must be done and accordingly remitted the matter to the file of AO/TPO for fresh consideration.

ITO vs iPass India P LTD-TS-584-ITAT-2017(Bang)-TP-IT(TP)A no.597/bang/2013 dated 16.06.2017

101. Where the DRP had adopted wrong related party transactions (0)% and Turnover (Rs. 1-200 cr) in respect of assessee providing software development and related services, the Tribunal held that the Tribunal had been consistently adopting 15% RPT filter and 1/10th or 10 times of assessee's turnover as turnover filter and accordingly remitted TP-issue back to the file of AO/TPO for fresh adjudication.

L.G Soft India Pvt. Ltd vs. DCIT-TS-553-ITAT-2017(BANG)-TP dated 09.06.2017

102. The Tribunal restored TP-issue for assessee engaged in the manufacture of spark plugs and marketing and distribution of products for AY 2005-06 to the file of AO/TPO for fresh consideration. The TPO while reviewing the valuation done by assessee found that the assessee had earned commission income of Rs. 1.65 crores while none of the comparables had earned commission income. The Ld. TPO also observed that the goods sold to the Associated Enterprise and non-AE were not similar and hence the comparison made by the assessee company was not acceptable. Noting that the TPO had refused to include commission income while working out PLI of assessee on the ground that none of the comparables earned commission income, it held that the TPO's approach of outright rejecting the comparable was not tenable. The assessee had adopted TNMM with operating revenue computed in relation to total cost as a PLI for import of raw material, components and tools, provision of marketing support services and professional services. Noting the assessee's contention that marketing and professional services were intrinsic to assessee's business model and therefore could not be considered as separate business segment, it held that combined transactions approach could be followed under Rule 10A(d) r.w.r. 10B, but the onus to demonstrate with evidence that such an approach was justifiable was on the assessee and it had failed to justify as to why the rendering of marketing services and professional services should be classified as closely linked transactions. The Tribunal questioned TPO's approach of outright rejecting aggregation of transactions without giving any justification and accordingly directed the AO/TPO to re-determine the ALP of each transaction after considering whether such transactions should be combined for the purpose of benchmarking after taking into account the material submitted by assessee..

ITO vs Federal Mogul Automotive Product (India) Pvt Ltd-TS-499-ITAT-2017(DEL)-TP-ITA No. 599/del/2012 dated 12.05.2017

103. The Tribunal upheld TPO's rejection of assessee's TP-study due to failure to adopt filters like employee-cost filter and export earnings filter as well as use of 3 years weighted profit margin. Further, it rejected assessee's grounds to include/exclude comparables since no proper application had been made by assessee for admission of additional grounds and the same had not been a subject matter of proceedings before the AO/DRP.

Curam Software International Pvt Ltd vs ITO-TS-540-ITAT-2017(Bang)-TP-IT(TP)A No.192/bang/2017 dated 07.06.2017

104. The Apex Court, admitted Revenue's SLP challenging High Court decision upholding exclusion of comparable following different financial period and rejecting the Revenue's submission that mandate of Rule 10B of the Rules could **not** be ignored **merely because** the difference in the respective financial periods was only of three months.

CIT vs PTC Software (I) Pvt Ltd-TS-598-SC-2017-TP- SLP 16015/2017 dated 04.07.2017

105. The Tribunal admitted assessee's grounds seeking exclusion of 14 comparables viz. [Accel Transmatic Limited, Avani Cincom Technologies Limited, Celestial Labs Limited, E-Zest Solutions Limited, Flextronics Software Systems Limited, Geometric Limited, Ishir Infotech Limited, KALS Information

Systems Limited, Lucid Software Limited, Megasoft Limited, Persistent Systems Limited, Tata Elxsi Limited, Thirdware Solutions Limited and Wipro Limited] on grounds of functional dissimilarity and 4 companies viz., [Hellos & Matheson Information Technology Limited, Infosys Technologies Limited and Sasken Communication Technology Limited on grounds of RPT filter **and remanded the matter** to the file of AO/TPO with the direction to decide the issue on merits.

Novellus Systems (India) P Ltd-TS-632-ITAT-2017(Bang)-TP-ITA No. 1087/bang/2011 dated 12.07.2017

106. The Tribunal allowed assessee's appeal against cryptic CIT(A) order on comparables selection in respect of call center services rendered to AE for AY 2005-06. The TPO had finalized a list of 9 comparable enterprises exporting IT Enabled Services. The Tribunal noting that the CIT(A) had not given any reasoning for upholding the inclusion of the comparables, held that the CIT(A) should have examined the FAR of the comparables while examining assessee's objections. Accordingly, it remitted the matter back to the file of CIT(A) for fresh adjudication.

24/7 Customer.com P. Ltd vs. DCIT-TS-627-ITAT-2017(BANG)-TP-IT(TP)A no. 228/bang/2010 dated 12.07.2017

107. Where the assessee was not engaged in the activity of purchase and sales, the Tribunal held that the TPO had erred in selecting comparables engaged in trading activity while benchmarking the assessee's business support services and accordingly upheld CIT(A)'s order deleting TP-adjustment for AYs 2007-08 and 2008-09 in respect of the aforesaid services provided to its AEs for the purpose of sourcing of goods.

DCIT vs Itochu India (P) Ltd-TS-650-ITAT-2017(DEL)-TP-ITA No. 6287/del/2012 dated 18.08.2017

108. The Court, observing that the order of Tribunal did not give rise to any substantial question of law dismissed Revenue's appeal challenging exclusion of ICC International Agencies Ltd as a comparable for AY 2008-09.

CIT vs Panasonic Industrial Asia Pte Ltd-TS-520-HC-2017(DEL)-TP-ITA No. 244/2017 dated 24.04.2017

109. Where the assessee was awarded an Engineering, Procurement and Construction contract from its AE containing 4 parts viz. 1.onshore services 2. Onshore supply of equipment / spares 3. Offshore services and 4.offshore supply of equipment, the Tribunal held that the TPO was justified in aggregating all the transactions for the purpose of benchmarking the transaction under TNMM as against the benchmarking approach adopted by the assessee i.e. separate benchmarking of equipment supply and services. Observing that the contract was composite in nature as the assessee was required to deliver the complete facility to its AE and revenue of both supply and services were recognized under the percentage of contract executed method, it held that aggregate benchmarking was justified. However, the Tribunal rejected the TPO's characterization of the assessee as an engineering service provider as more than 60 percent of revenue was from supply of equipment. Accordingly, it remitted the matter to the TPO for fresh adjudication directing him to consider the assessee as an EPC contractor engaged in providing turnkey solutions.

RTA Alesa AG vs DCIT (International Taxation)-TS-675-ITAT-2017(DEL)-TP-ITA No. 1659/del/2017 dated 31.08.2017

110. The Tribunal rejected Revenue's miscellaneous petition against Tribunal order remitting the comparability of Lotus Labs to examine RPT percentage. Since the assessee had argued that Lotus Labs should be rejected as a comparable as it had significant RPT while Revenue had contended that there were no RPT in the non-AE segment, the Tribunal restored the matter back to the file of AO/TPO to re-examine whether RPT was significant or not.

DCIT vs AstrsZeneca Pharma India Ltd-TS-708-ITAT-2017(Bang)-TP-[MP No. 1 Q9/B/2017 dated 24.08.2017

111. The Tribunal, relying on the decision of High Court in the case of Chryscapital Investment Advisors (India) Pvt Ltd [376 ITR 183], held that huge profit / turnover does not ipso facto lead to exclusion of a comparable unless such difference materially affected price/ cost. Further, on the RPT filter, it held

that Tribunal had been consistently adopting 25% and accordingly directed the CIT(A) to adopt 25% as the RPT filter as against 0%. Accordingly, it restored the matter to the file of CIT(A), directing it to decide the issue afresh by applying 25% RPT filter and examining the aspect of high profit and turnover.

ITO vs. AT & T Global Business Bangalore Services India (P) Ltd (Formerly known as USI Internet Working Solutions Pvt. Ltd.)-TS-680-ITAT-2017(BANG)-TP-IT(TP)A no. 342/bang/2012 dated 24.08.2017

112. The Tribunal, relying on the decision in the case of Chryscapital Investment Advisors India P Ltd [TS-173-HC-2015(DEL)-TP], restored TP-adjustment for AY 2005-06 and 2008-09 to the file of AO/TPO. It held that huge profits or huge turnover could not ipso facto lead to exclusion of comparable unless such difference could materially affect the price or cost. Further, it held that an attempt had to be made to make a reasonable adjustment to eliminate the material differences between assessee's transaction and comparables. Accordingly, it directed the AO/TPO to consider the issue afresh after giving the assessee an opportunity of being heard.

DCIT v ARM Embedded Technologies P. Ltd-TS-703-ITAT-2017(Bang)-TP-ITA No. 623 & 624(bang) 2013 dated 24.08.2017

113. The Tribunal allowed the appeal of the Revenue and relying on Chryscapital Investment Advisors (India) Pvt Ltd [TS-173-HC-2015(DEL)-TP], held that the CIT(A) erred in excluding certain comparables on grounds like size, turnover, high profit margin etc., It held that huge profit or turnover, ipso facto would not lead to the exclusion of a comparable and directed the TPO to verify if such difference materially affected the price or cost and if so make reasonable adjustment to eliminate the effect of such differences. Accordingly, it restored the matter to the file of AO for fresh consideration.

DCIT vs. Synopsys India Pvt. Ltd.-TS-678-ITAT-2017(Bang)-TP-ITA no. 874/B/2013, 1576 & 1622/B/2014 & C.O No. 154(B)-2015 dated 16.06.2017

114. The Tribunal, relying on the decision in assessee's own case for AY 2006-07 [TS-672-HC-2015(DEL)-TP] remanded the matter to the file of TPO directing it to verify the quarterly results and include CG-VAK Software & Exports as a comparable for the assessee since it was a listed company and quarterly results of the company were available in the public domain and accordingly there was no need of extrapolating the result.

Mckinsey Knowledge centre India Private Limited vs DDIT-TS-700-ITAT-2017(DEL)-TP-ITA No. 1879/del/2014 dated 30.08.2017

115. Where the assessee had filed an appeal against various filters applied by TPO viz., 25% RPT filter. Rs. 1-200 cr turnover filter, employee cost filter, functionality etc, the Tribunal noting that the RPT filter of 25% and turnover filter have been universally applied by many coordinate benches, restored the matter to the file of AO/TPO directing it to verify the functional comparability of those companies satisfying the turnover and RPT filter applied by TPO.

Texas Instruments (India) Pvt Ltd vs ACIT-TS-738-ITAT-2017(Bang)-TP-IT(TP)A no. 755 & 756 (bang) 2012 dated 08.09.2017

116. Noting that assessee had not included Microgenetic Systems in final set of comparables due to non-availability of financial data which subsequently became available during assessment proceedings, pursuant to which assessee sought its inclusion, the Tribunal upheld CIT(A)'s direction to include the said company as comparable while benchmarking the assessee's international transaction viz., provision of engineering design services to its AE. Relying on the decision in the case of Vishay Components India Private Ltd [TS-356-ITAT-2016(PUN)] held that since TPO had the powers to select and include any functionally comparable concern in the final set of comparables, data of which was available during TP proceedings and not TP study report, the same was permissible even in the case of assessee. Accordingly, it dismissed Revenue's appeal.

Dar Al-Handasah Consultants (Shair and Partners) India Pvt Ltd-TS-741-ITAT-2017(PUN)-TP-ITA No. 1711 / PUN / 2014 dated 30.08.2017

117. The Tribunal deleted the TP adjustment made vis-à-vis the manufacturing and trading segment of the assessee (engaged in manufacturing and distributing electric meters). It upheld the assessee's approach of benchmarking each transaction separately based on separate certified segments viz. domestic manufacturing, export manufacturing and trading as opposed to the TPOs approach of benchmarking the same on an aggregate basis. It held that the bundled / aggregate approach was only permissible when the transactions could not be benchmarked independently and considering the fact that the assessee's international transactions constituted only 5.75 percent of total transactions it held that comparison based on aggregation of both domestic and international transactions would lead to absurdity. Accordingly, it deleted the addition made by the TPO.
DCIT vs Landis + Gyr Ltd-TS-711-ITAT-2017(Kol)-TP dated I.T.A No. 584/Kol/2015 , I.T.A No. 687/Kol/2015 , I.T.A No. 549/Kol/2016 13.09.2017
118. The Court, set aside Tribunal's order remanding TP-issues in respect of international transactions undertaken in assessee's distribution, agency & marketing segments without giving any conclusive finding on selection of comparables for AY 2008-09. It held that Rule 10B(2) r.w. Rule 10B(3) required that comparables selection to be made with reference to FAR analysis and after considering specific characteristic of the property transferred or services provided in both the controlled and uncontrolled transactions. Accordingly, it remanded the matter to the file of Tribunal for disposal on merits.
Corning SAS-India Branch Office vs DDIT-TS-725-HC-2017(DEL)-TP- ITA 505/2017 dated 18.09.2017
119. The Court dismissed Revenue's appeal against Tribunal's order noting that the Tribunal had excluded Tata Elxsi and E-Infochips as comparables on the ground that separate segmental details in respect of software development services segment was not available, as the order of the Tribunal given on facts, did not give rise any substantial question of law.
Pr.CIT vs. Steria India Ltd-TS-733-HC-2017(DEL)-TP -ITA no. 762 / 2017 dated 19.09.2017
120. The Apex Court, allowed Revenue's request to withdraw SLP against High Court order for AYs 2006-07 & 2007-08 wherein the Court had upheld exclusion of comparables on account of different financial year, rejecting Revenue's contention that a difference of 3 months could be ignored.
CIT vs. PTC Software India Pvt. Ltd-TS-707-SC-2017-I.A no. 84278 of 2017 dated 08.09.2017
121. The Tribunal allowed the appeal of the Revenue and relying on Chryscapital Investment Advisors (India) Pvt Ltd [TS-173-HC-2015(DEL)-TP], held that the CIT(A) erred in excluding certain comparables on grounds like size, turnover, high profit margin etc.,It held that huge profit or turnover, ipso facto would not lead to the exclusion of a comparable and directed the TPO to verify if such difference materially affected the price or cost and if so make reasonable adjustment to eliminate the effect of such differences. Accordingly, it restored the matter to the file of AO for fresh consideration.
Tesco Hindustan Service Centre Pvt Ltd vs CIT and others-TS-740-ITAT-2017(Bang)-TP-IT(TP)A No.577/Bang/2012 dated 13.09.2017
122. The Tribunal, relying on the decision in the case of Logica Private Limited [TS-187-ITAT-2017(bang)-TP] wherein it was held that merely because of a working capital impact of 4%, the said companies could not be characterized as being engaged in the provision of financing activities, held that as the TPO himself had included the companies, they passed all necessary filters and directed the inclusion of FCS and Thinksoft Global as comparables in respect of benchmarking assessee's international transaction of ITes services.
Target Corporation India Pvt Ltd-TS-756-ITAT-2017(Bang)-TP-IT(TP)A No.184 (Bang) 2014 dated 31.08.2017
123. Where the DRP suo-moto invoked 0% RPT filter and applied Rs. 200 cr turnover filter pursuant to which only 2 companies remained in the list of comparable, the Tribunal, relying on the decision in the case of ACI Worldwide Dolutions P Ltd. [TS-614-ITAT-2017(Bang)-TP] (wherein it was held that RPT filter of 25% was required to be applied if there were less than six comparables and 15% would be applied if they were more than six comparables), remitted the matter to the file of DRP directing it to apply 25% RPT filter. Further, in respect of application of Rs. 200 cr turnover filter, noting that the

DRP did not have the benefit of Chryscapital Investment Advisors India P Ltd [TS-173-HC-2015(DEL)-TP] ruling (wherein it was held that comparables could not be excluded merely on account of high turnover), it remitted the application of turnover filter back to DRP for fresh adjudication.

Broadcom Communications Technologies P Ltd vs ACIT-TS-752-ITAT-2017(Bang)-TP dated 01.09.2017

124. The Tribunal accepted the assessee's approach of benchmarking its international transactions (viz. developing and selling packaging material, importing and reselling straws and manufacturing processing equipment) on an aggregate basis as opposed to the TPO's approach of benchmarking the transactions separately. Observing that the assessee sold straws along with packaging material at a reduced price so to as reduce its total cost of packaging in order to create demand for consumables manufactured by it, relying on the OECD Transfer Pricing guidelines, it held that since the business strategy of the assessee was an accepted manner of conducting business, the same should not be segregated. Accordingly, it dismissed the appeal of the Revenue.

Tetra Pak India Pvt Ltd – TS-762-ITAT-2017 (Pun) – TP- ITA No.359/PUN/2014 20.09.2017

125. The Court upheld the order of the Tribunal and held that an assessee is not barred from withdrawing a comparable originally selected by it in its transfer pricing study where the comparable was included on account of mistake of fact or where on further examination the assessee realised that the said company is not comparable. It held that the Transfer Pricing mechanism requires comparability analysis to be done between companies and the controlled transactions and that the assessee's submission in arriving at ALP is not the final position as the TPO is to examine whether the companies selected by the assessee are in fact comparable.

CIT v Tata Power Solar Systems – published on 09.08.2017

d. **Computation / Adjustments**

Profit Level Indicator

126. The Tribunal allowed Revenue's appeal w.r.t treatment of forex gain and held that forex gain/loss had to be treated as operating income while computing the margin of the current year if such gain was in respect of the turnover of the current year. It observed that the lower authorities had not given a finding on this aspect and accordingly remitted the matter to the file of the AO/TPO with the direction that assessee should establish that the foreign exchange gain was earned by the assessee in the current year for the purpose of computing operating margin.

DCIT vs ABB Global Services Pvt Ltd-TS-501-ITAT-2017(BANG)-TP- IT(TP)A No.49 and 97/B/2014 dated 05.05.2017

127. The Tribunal rejected Revenue's contention that definition of 'operating cost' & 'operating revenue' under Rule 10TA (Definitions in respect of Safe Harbour Rules for International Transactions) should be adopted for Rule 10B & Sec. 92 and held that such definition under Rule 10TA was for a specific purpose. Accordingly, it held that the forex gain on AE-receivables on account of services rendered by assessee (captive service provider designing transformer components etc. under the projects provided by AE) was to be considered as operating revenue for computing assessee/comparables margin for AY 2009-10.

Virginia Transformer India P. Ltd vs. ITO-TS-651-ITAT-2017(DEL)-TP-ITA No. 1001/del/2014 dated 31.07.2017

128. The Tribunal, following the decision of co-ordinate bench in assessee's own case for AYs 2009-10 and 2010-11 [TS-80-ITAT-2015(Mum)-TP], allowed assessee's appeal and held that loss/gain on account of foreign exchange fluctuation had to be considered as operating in nature

Hapag-Llyod Global Services Private Limited-TS-676-ITAT-2017(Mum)-TP-ITA No. 2190/mum/2017 dated 18.08.2017

Forex Fluctuation

129. The Court, noting that Tribunal had discussed in detail the factual position regarding the sharp depreciation of Indian Rupee (INR) against the Euro (EUR) by about 16% in a short span of 6 months, i.e., February to July 2008, held that a forex fluctuation adjustment had to be carried out in accordance with the Transfer Pricing regulations so as to eliminate differences between international transactions involving comparable companies and that entered into by the assessee. Accordingly, it held that the Tribunal was correct in making the said adjustment.

Pr. CIT vs. Schneider Electric India Pvt. Ltd-TS-696-HC-2017(DEL)-TP-ITA no. 713/2017 Dated 09.07.2017

Segments

130. Where the assessee had allocated its direct costs as per the actuals and indirect costs based on turnover between the AE and Non-AE segments, the Tribunal held that the TPO was incorrect in rejecting the said bifurcation and allocating all costs (direct and indirect) based on turnover of the two segments. Accordingly, it set aside the issue back to the file of AO/TPO for the limited purpose of proper verification and allocation of cost. Further, in respect of treatment of forex fluctuation gain/loss on AE receivables, it held that the same had to be treated as operating revenue/cost.

Allegis Services India Pvt Ltd vs DCIT-TS-723-ITAT-2017(Bang)-TP - I.T.(T.P) A. No.1370/Bang/2014 dated 15.09.2017

131. The Tribunal, accepting assessee's submission that since few of the expenses such as depreciation, wages, consumable, power and fuel etc. were directly allocable to manufacturing sector, they could not to be allocated to assessee's trading activity for computation of OP/OC arising therefrom, directed the AO to exclude expenses directly relating to manufacturing segment while allocating expenses to manufacturing and trading segment in the ratio of turnover.

Silver Oak Laboratories Pvt Ltd vs ACIT-TS-688-ITAT-2017-ITA no. 6197/del/2012 dated 28.08.2017

Working Capital Adjustment

132. The Tribunal dismissed 3 appeals filed by Revenue for AYs 2007-08, 2008-09 and 2009-10 with respect to grant of working capital adjustment and treatment of forex gains/loss. The Revenue had alleged that the CIT (A) had wrongly issued direction to the TPO to grant working capital adjustment as per the prevailing norms and as per the provisions of Section 251(1)(a) of the Act, the CIT(A) had no power to issue the direction. Rejecting Revenue's contention that CIT(A)'s direction to TPO for granting working capital was beyond jurisdiction held that CIT(A) had not directed the TPO in the way portrayed by Revenue authorities, and held that the direction was only to calculate and grant the working capital adjustment based on final set of comparables. Relying on the decision in the case of SAP Labs India P Ltd, Tribunal noted that TPO neither disputed the quantum of the foreign exchange gain/loss nor had given any finding that such gain / loss was not arising out of assessee's activities and therefore upheld CIT(A) order treating the forex gain / loss as operating in nature.

Sanyo BPL P. Ltd vs. DCIT-TS-537-ITAT-2017(Bang)-TP- I.T(TP)A Nos.1578 to 1580/Bang/2014 dated 09.06.2017

133. The Tribunal upheld DRP's order lifting working capital cap imposed by TPO for AY 2009-10. Observing that the TPO had restricted working capital adjustment to 0.91% which was nothing but the average cost of capital of comparable companies selected by him without considering the capital figures for assessee. The Tribunal held that the TPO could not force the assessee to fund its working capital requirements in a specific way as the same was not in his domain. Accordingly, it held that the DRP was correct in lifting the working capital cap imposed.

DCIT vs. Synchrony International Services Pvt. Ltd (Formerly known as GE Global Servicing Pvt. Ltd)-TS-622-ITAT-2017(BANG)-TP dated 14.07.2017

+ / - 5% adjustment

134. The Court dismissed the Revenue's appeal against Tribunal's order deleting the TP adjustment since as per the proviso to section 92C(2), the transfer price was within the range of 5% of ALP. The TPO had made an adjustment in the case of assessee which was upheld by DRP. The Tribunal, however, deleted the TP adjustment made by AO since as per the proviso to section 92C(2), the Transfer price was within the range of 5% of ALP and accordingly, it directed the AO to consider proviso to section 92C(2) and arrive at the conclusion.

CIT vs DHL Danzas Lemuir Pvt Ltd-TS-559-HC-2017(BOM)-TP-ITA No.1492 of 2014 dated 05.07.2017

135. Where the DRP accepted assessee's claim for revised working of margin for one of the comparables and subsequently, the AO passed order u/s 154 in view of some basic flaws in AO's computation pointed out by assessee, noting that after considering the revised margin for one of the comparables (as accepted by DRP) the variation from ALP was within 5% of the transaction price and thus no TP adjustment would survive, the Tribunal remitted the matter to the TPO for verification of the working submitted by the assessee with a direction to decide the issue afresh as per law after such verification

BASF Coatings (India) P. Ltd vs ACIT-TS-522-ITAT-2017(Mum)-TP- ITA no.1555/Mum./2012 dated 28.04.2017

Others

136. The assessee had entered into an international transaction in respect of purchase of raw material, return of packing material and sale of finished goods from its AE and applied TNMM for the purpose of benchmarking the international transaction. It had installed windmill for generating power and sold the above power to its manufacturing division in lieu of payment of transmission cost computed at the rate as is charged by the state undertaking and recorded it in its books as an operating income. The TPO and CIT(A) excluded windmill income as non-operating income for the purpose of determining the ALP. On appeal, the Tribunal held that assessee's windmill income had nothing to do with its international transactions. It rejected assessee's contention that it sold its captive power from one division to the other instead of generating revenue from open market and windmill income had already been taken as business income for the purpose of section 80IA deduction and held that both the divisions of the assessee viz., windmill land and steel manufacturing were separate without having any interwoven element embedded therein and mere fact of the windmill income accepted under the head of business income would not make it as income derived from manufacturing division forming subject matter of the impugned transfer pricing adjustment.

Rajratna Metal Industries Ltd-TS-521-ITAT-2017(Ahd)-TP-ITA No.1050/ahd/15 and 91/ahd/15 dated 12.05.2017

137. The Tribunal, relying on the decision in the case of Kshema Technologies Ltd [TS-182-ITAT-2016(BANG)], held that the use of entity level margin for the purpose of benchmarking international transactions was not permissible as per the provisions of Transfer pricing under chapter X of the Act. Accordingly, it remitted the TP-issue in respect of assessee (engaged in the development of computer software and providing other related services) to the AO/TPO for fresh consideration by comparing the margins of the international transactions with the uncontrolled comparable price. Observing that the CIT(A) had considered foreign AE as a tested party, it held that only price/PLI of the assessee's international transaction had to be compared with the uncontrolled comparable price.

Mphasis Limited vs ACIT-TS-539-ITAT-2017(Bang)-TP- I.T. (T.P) A. No.1104/Bang/2012 and 1258/bang/2012 dated 07.06.2017

138. Noting that there was a typographical error in the order of the TPO wherein the OP / OC margin was inadvertently mentioned as 13% as opposed to the correct margin of 15% (as self-evident from the computation produced in the impugned order), the Tribunal remitted the issue back to the file of the AO to verify whether the ALP of international transactions determined by the TPO (18.864% based on 5 comparables) fell within the + / - 5 percent adjustment under proviso to Section 92C(2) of the Act.

Everest Business Advisory India Private Limited vs. DCIT-TS-748-ITAT-2017(DEL)-TP-ITA no. 5211 / del / 2014 dated 25.09.2017

e. **Specific Transactions**

Advertisement, Marketing and Promotion expenses

139. The Tribunal in the second round of proceedings, remitted AMP-adjustment back to AO/TPO in case of the assessee engaged in distribution of watches etc for determining the existence of international transaction. In the first round of proceedings, the Delhi High Court had directed Tribunal to adjudicate the core issue as to whether there existed an international transaction entered with assessee's AE in respect of AMP expenses. Examining the facts, Tribunal noting that TPO had not given any finding w.r.t actual expenditure incurred and had analyzed terms and conditions set out in only one of the several agreements with AE, held that it had to be examined in detail whether the services rendered by appellant of incurring expenditure incurred by assessee had really resulted into any benefit to the foreign AE. Accordingly, it restored the matter back to the AO/TPO for determining the existence of international transaction with the direction to determine ALP if the existence of international transaction was proved.

Casio India Company Pvt Ltd vs DCIT-TS-586-ITAT-2017(DEL)-TP-ITA no. 4726/del/2010 dated 03.04.2017

140. The Apex Court admitted Revenue's SLP filed against the judgment of the Delhi High Court in case of Bose Corporation India Pvt Ltd on the issue of AMP-adjustment wherein the Court dismissed the Revenue's appeal against the Tribunal order remitting the AMP-adjustment back to the file of TPO for fresh consideration following SB ruling in LG Electronics. The High Court had held that since L.G. Electronics itself was been partially reversed the matter that was remitted was to be reconsidered in light of the directions in Sony Ericsson Mobile Communications India Private Limited.

Pr. CIT vs. Bose Corporation India Pvt. Ltd- [TS-556-SC-2017-TP]- ITA No. 635/2016 dated 03.07.2017

141. The Court allowed assessee's appeal against Tribunal order remanding marketing intangibles issue to the file of AO/TPO since the Revenue had failed to show existence of an international transaction with its AE. Distinguishing coordinate bench ruling in the case of Le Passage to India Tour & Travels case wherein the matter was remanded absent determination by TPO as to existence of international transaction, **the Court** held that TPO had applied his mind as to existence of international transaction involving advertising, marketing and brand promotion ('AMP') expenses and his conclusion as to this issue was solely on the ground that assessee's AMP expenses were in excess of that incurred by comparable. Noting that TPO had applied Bright Line test and made an adjustment of Rs. 23.98 crores which was confirmed by CIT(A), The Court held that Bright Line Test' ('BLT') was not an appropriate yardstick for determining the existence of an international transaction and the mere fact that the Assessee was permitted to use the brand name 'Valvoline' would not automatically lead to an inference that any expense that the Assessee incurred towards AMP was only to enhance the brand 'Valvoline. Further, it held that Tribunal was not justified in remanding the matter to the AO/TPO when in fact, Revenue had failed to discharge its onus to show the existence of any arrangement or agreement inferring that the AMP expense incurred by the assessee was for the benefit of AE.

Valvoline Cummins Private Ltd vs DCIT-TS-610-HC-2017(DEL)-TP-ITA no.158/2016 dated 31.07.2017

142. Noting that the co-ordinate bench had in assessee's own case for AYs 2004-05 and 2005-06 confirmed deletion of AMP adjustment, the Tribunal deleted AMP adjustment of Rs. 5.29 cr in respect of assessee engaged in the business of blending, bottling and trading of India made foreign liquor. Noting that the AO had disallowed 10% of total brand expenses on the contention that expenses incurred by assessee was for increasing brand popularity of parent company it held that benefit arising to AE was purely incidental and since the product manufactured and sold by the assessee was India specific it could not be said that any benefit could have accrued to the AE on account of AMP spend in India in respect of such brand.

Pernod Ricard India Pvt Ltd vs ACIT-TS-618-ITAT-2017(DEL)-TP-ITA No.4626/del/2010 dated 24.06.2017

143. The Court, following the **ruling of the** coordinate bench in assessee's own case for AY 2009-10, dismissed Revenue's appeal against Tribunal's order remanding AMP issue to the file of AO by **holding** that the Revenue had failed to establish existence of international transaction between assessee and AE involving AMP expenses.
Pr.CIT vs Valvoline Cummins Ltd-TS-613-HC-2017(DEL)-TP-ITA no. 1031/2015 dated 31.07.2017
144. The Court, set aside Tribunal's order restoring AMP issue to the file of AO/TPO for fresh consideration. It noted assessee's submission that the Tribunal did not have the benefit of rulings of Sony Ericsson Mobile Communications India Pvt Ltd [TS-543-HC-2016(DEL)-TP], Daikin Air-conditioning India Pvt. Ltd. [TS-533-HC-2016(DEL)-TP] wherein the Court had held that prior to commencement of TP exercise, existence of international transaction involving assessee and its AE had to be first established. Accordingly, the Court restored the matter to the file of Tribunal directing it to decide the assessee's appeal afresh without being influenced by anything said in any of the previous order of the Tribunal that had been set aside by this order.
Haier Appliances (India) P. Ltd vs. DCIT-TS-684-HC-2017(DEL)-TP-ITA no. 563/2017 dated 01.09.2017
145. The Tribunal, relying on the coordinate bench's ruling in assessee's own case for AY 2007-08, deleted AMP adjustment **in the case of the assessee** (engaged in manufacturing & marketing of international alcoholic brands) and held that in the absence of an agreement/arrangement between the assessee and its AE and considering the fact that the assessee mainly made payments to unrelated domestic parties, AMP expenses incurred did not constitute an international transaction.
Diageo India Private Limited vs. ACIT-TS-699-ITAT-2017(Mum)-TP- ITA No. 981/Mum/2017 dated 18.08.2017
146. The Tribunal, referring to assessee's exclusive distribution agreement with AE, held that since the assessee undertook brand promotion of Toshiba in India and AEs reimbursed a substantial sum, it constituted an international transaction for AY 2012-13. Referring to the decision of Sony Ericsson, it held that distribution and AMP functions were two separate international transactions and due to their inter-twinning nature, both transactions could be aggregated only for the purpose of benchmarking so that surplus from one could be adjusted against deficit from other in the overall approach. Accordingly, it held that in the absence of suitable comparables carrying out similar functions or where adjustment could be made to iron out differences between functions performed by assessee and comparables, ALP of international transaction of AMP-function should be determined in segregated manner, however a proper set off, if any, available from the distribution activity, should be allowed.
Toshiba India Pvt Ltd vs DCIT-TS-686-ITAT-2017(DEL)-TP- ITA No.1357/Del/2017 dated 01.09.2017
147. The Tribunal, in the second round of proceedings, deleted Rs. 22.30 cr AMP adjustment made on protective basis. Noting that TPO had proposed AMP-adjustment on protective basis by applying bright line test (BLT), the Tribunal, relying on the decision in the case of Perfetti Van Melle India Pvt Ltd [ITA No. 1073 / del / 2017] and Sony Ericsson Mobile Communications India (P) Ltd [55 taxmann.com 240 (Delhi)] held that Bright Line test had no statutory mandate and it was illogical to consider non-routine AMP-expenses as a separate transaction.
Nikon India Pvt Ltd vs DCIT-TS-749-ITAT-2017(DEL)-TP-ITA no. 4574 / del / 2017 dated 20.09.2017
148. The Apex Court admitted Revenue's SLP against High Court order remitting AMP issue for comprehensive decision on whether AMP expenditure in assessee's outbound travel business i.e., engaged in the business of organizing tours and arrangements for foreign tourists coming to India and going out of India) constituted an international transaction. The AO had made TP addition in respect of AMP expenses incurred in outbound segment by comparing them with expenses of inbound segment, which was remitted by the Tribunal on the ground that the segments were materially different and required different level of expenditure for promotion. On appeal, the High Court had remitted the matter to the Tribunal holding that the Tribunal should have first decided whether in the

circumstances of the case, the nature of AMP reported could lead to the conclusion that there was an international transaction and then remitted the matter to the file of AO for fresh examination.

DCIT vs Le Passage To India Tour & Travels P Ltd-TS-687-SC-2017-TP IA No. 80934/2017 dated 04.09.2017

Loans / Receivables / Corporate Guarantee

149. The Tribunal restricted TP-adjustment towards guarantee commission at 0.385% for AY 2007-08 to 2009-10 in respect of corporate guarantee provided by assessee to Bank of America in connection with loans taken by its AE. The assessee had not charged any guarantee commission fee to the AE for providing the said guarantee and contended that the transaction did not fall within the definition of an international transaction u/s 92B of the Act as it had no bearing on income of the assessee. The TPO did not accept the above contention and held that providing guarantee to its AE was a clear evidence of benefit being provided. If the AE had requested any bank or third party to provide such guarantee for its loans, it would have had to pay guarantee fee/commission. The Tribunal relying on the decision in assessee's own case for AY 2005-06 and 2006-07, upheld CIT(A) ALP determination based on average guarantee commission rate **i.e 0.385%** paid by assessee to various third-party banks. Further, the assessee had given interest free loans to two of its subsidiaries since the amounts had been given as temporary advances for the purpose of meeting their urgent business requirements. Further, the companies **were** 100% subsidiaries of the assessee which contributed to furthering the business interest of the assessee. The TPO has not accepted the explanation given by the assessee and held that the assessee ought to have charged the interest on the said loans at the prevailing market rate and made an adjustment of Interest at 5.3% of the amount advanced. The Tribunal relying on the decision in the case of Taurian Iron & Steel Co. Pvt Ltd vs ADCIT [ITA No. 5920/mum/2012] and Golawal Diamonds vs ACIT [ITA No. 518/mum/2014] directed the AO to restrict the adjustment at LIBOR+1.50%.

ACIT vs Reliance Industries Ltd-TS-528-ITAT-2017(Mum)-TP-ITA no.4361/mum/2012 dated 12.04.2017

150. The Tribunal, noting that the question whether corporate guarantee was an international transaction was pending before the special bench, remitted TP-issues in respect of corporate guarantee to the file of AO/TPO for assessee (engaged in the business of television new broadcasting and producing customized software, programs for broadcasters) for AY 2009-10 with the direction to decide the issue after decision of the special bench of the Tribunal. Further, in respect of working capital adjustment, it remitted the issue back to the file of TPO with a direction to the assessee to submit details of working capital adjustment to the TPO and directed the TPO to grant the adjustment after verifying the details if it was found to be in accordance with law.

New Delhi Television Ltd vs ACIT-TS-579-ITAT-2017(DEL)-TP- ITA No. 1212/Del/2014 & 2658/Del/2014 C.O. No. 233/Del/2014 dated 14.07.2017

151. Relying on the decision in the case of Tally Solutions [TS-620-ITAT-2016(Bang)-TP and assessee's own case [TS-865-ITAT-2016(Bang)-TP], the Tribunal held that extending credit period for realization of sales to AE could not be treated as an individual and separate transaction of advance or loan and accordingly, remitted the ALP determination for outstanding AE receivables to the file of AO/TPO to consider the credit period allowed in realization of sale proceeds as closely linked transaction to the transaction of providing services to AE. Rejecting Revenue's contention based on Delhi HC ruling in Kusum Healthcare Pvt. Ltd that TPO had to analyze the statistics over a period of time (and not merely for one AY) to discern a pattern which would indicate whether the receivables arrangement reflected an international transaction intended to benefit the AE in some way, it held that there may be delay in collection of monies for supplies made even beyond the agreed time limit due to a variety of factors which had to be investigated on a case to case basis.

Lotus Labs Pvt. Ltd. vs. DCIT-TS-574-ITAT-2017(Bang)-TP IT(TP)A Nos.92 & 98/Bang/2016 dated 07.07.2017

152. The Tribunal rejected 'nil' ALP determined by TPO in respect of transaction for import of fixed assets from AE and held that ALP could not be 'nil' unless it was brought on record by the TPO that in third party situation, the cost to such an asset would also be 'nil'. Further, in respect of delay in receipt of payments from its AE, the AO/TPO treated it as an unsecured loan advanced to the AE and charged interest on the same by taking SBI base rate and adopted interest rate of 11.69%. The assessee contended that the credit period extended to third parties was much longer and since no interest had been charged on delayed payments made by third parties, no interest should be imputed in respect of receivables outstanding from the AEs also. Relying on the decision in the case of Bechtel India Private Limited [ITA No. 1478/del/2015], it held that once it was an accepted fact that assessee did not have any interest bearing borrowed funds for extending any kind of loan to its AE, then it could not be reckoned that assessee had given any benefit to the AE by blocking its interest-bearing funds to the AE by extending the credit period. Further, it held that If a similar credit period was given to the AE as given to third parties, then under the arms-length scenario and looking into the similar conditions prevailing between controlled transaction and comparable uncontrolled transaction, there could not be any adjustment, as there would be a direct CUP to analyze such transaction and accordingly, it deleted the TP adjustment.

BC Management Services Pvt Ltd vs DCIT-TS-438-ITAT-2017(DEL)-TP- ITA Nos. 6134/Del/2015, 5829/Del/2015 & 6572/Del/2016- dated 25.05.2017

153. The Apex Court, relying on co-ordinate bench ruling in Kusum Healthcare Pvt. Ltd, and noting Tribunal's findings that the assessee was a captive service provider and a debt free company and that the Revenue had also not brought on record that the assessee had paid any interest to its creditors or suppliers on delayed payments, it directed that no separate adjustment for interest on receivables was warranted in the hands of the assessee and accordingly upheld the order of High Court.

Bechtel India Pvt Ltd-[TS-591-SC-2016-TP-ITA No. 379/2016 dated 21.07.2016

154. The Court referring to the decision of the coordinate bench in Tata Autocomp [TS-45-HC-2015(BOM)-TP] held that arm's length price in the case of loans advanced to AE would be determined on the basis of rate of interest charged in the country where the loan was received/consumed. Therefore, where the assessee was paying interest @ 4.79% on loans taken by it in the US, the interest of 7.5% charged by it on its loan to AE was at ALP. It held that the TPO was incorrect in adopting 14% as ALP based on interest rates prevalent in India.

CIT vs The Great Eastern Shipping Co Ltd- TS-534-HC-2017(BOM)-TP-ITA No. 1455 of 2014 dated 28.06.2017

155. For the purpose of determining the ALP of services rendered by the assessee to its AE i.e for arranging borrowers for obtaining foreign currency loans from AEs, the interest earned by the foreign AE could not be considered as the income of the assessee as the assessee had not contributed to the loan amount on which the foreign AEs had earned interest income.

DIT vs Credit Lyonnais-TS-608-HC-2017(BOM)-TP-ITA No.4433/mum/2009 dated 18.06.2017

156. The Tribunal, following the decision of the Court in Kusum Health Care [TS-412-HC-2017 (DEL)- TP] wherein it was held that once working capital adjustment was factored into ALP no separate adjustment on account of outstanding receivable was tenable, allowed the assessee's appeal and deleted the TP adjustment made towards notional interest on receivables and held that the TPO was unjustified in re-characterizing the receivable as a loan and imputing interest thereon at SBI + 300 basis points.

Teradata India Pvt Ltd v ITO – TS-655-ITAT-2017 (Del) – TP-ITA No. 87/del/2017 dated 08.08.2017

157. The Tribunal relying on co-ordinate bench's ruling in assessee's own case for AY 2010-11[TS-865-ITAT-2016(Bang)-TP] held that the credit period allowed in realization of sale proceeds was a closely linked transaction with the transaction of providing services to AE, could not be treated as an international transaction. Accordingly, it remitted the issue to the file of AO/TPO directing it to reconsider the issue of transfer pricing by clubbing and aggregating the transaction with the main transaction of providing service to the AE.

Lotus Labs Pvt. Ltd vs ACIT-TS-624-ITAT-2017(Bang)-TP-IT(TP)A no.2295/bang/2016 dated 12.07.2017

158. The assessee had advanced loans to **its** AE in Australia and charged interest rate of 10% p.a, which was rejected by the TPO who held that the 'BB' Corporate Board rate of 14.77% was to be adopted to determine the ALP under CUP method. Noting that assessee's finance cost were available on record, DRP issued directions that the bank overdraft interest rate should be adopted as the internal CUP. Following the order of the Tribunal in the assessee's own case for AY 2008-09(TS-305-ITAT-2016(Bang)-TP), the Tribunal held that LIBOR rate should be applied for the interest on the said loan transactions and if the interest rate of 10% p.a charged by the assessee was higher than the LIBOR applicable, the adjustment towards interest on the said loans advanced by assessee to its AEs was not tenable. Accordingly, it remitted the issue to the TPO for verification of LIBOR vis-à-vis rate charged by the assessee.

Indegene Pvt. Ltd (formerly known as Indegene Life Systems Pvt. Ltd) vs ACIT-TS-645-ITAT-2017(Bang)-TP-IT(TP)A no. 591/B/17 dated 02.08.2017

159. Relying on the decision in the case of Videcon Industries Ltd [TS-127-ITAT-2017(mum)-TP] wherein 0.5% rate was determined as guarantee fee ALP for benchmarking corporate guarantee transaction, the Tribunal directed the AO to compute ALP of guarantee fees at 0.5% in respect of corporate guarantee given by the assessee to its UAE based AE.

Mahindra Intertrade Ltd vs DCIT-TS-607-ITAT-2017(Mum)-TP-ITA no. 269/mum/2014 dated 15.03.2017

160. Where the assessee had provided corporate guarantee on behalf of its AEs in respect of a term loan obtained by the AE, and the TPO made an adjustment on the ground that an economic benefit had been provided by the assessee. The Assessee contended that no real benefit had been provided to the AE and after provision of corporate guarantee, the interest liability of the AE had increased. Since the DRP had not dealt with the assessee's objections relating to effect of increased interest rates and overall debt position of AE after corporate guarantee was given, the Tribunal, relying in the decision of the coordinate bench in assessee's own case for AY 2010-11 the TP issue in respect of corporate guarantee to the file of DRP for fresh consideration.

Apollo Tyres Ltd vs DCIT-TS-628-ITAT-2017(COCH)-TP-ITA No. 35/coch/2017 dated 24.07.2017

161. Relying on the decision of coordinate bench in assessee's own case for AY 2011-12 [TS-522-ITAT-2016(DEL-TP)], the Tribunal deleted the TP adjustment of Rs. 17.62 crores towards interest on compulsorily convertible debentures issued by the assessee **following the principle of consistency**. Noting that in the remand proceedings for AY 2011-12, TPO had not made any adjustment holding interest rate of 12% to be at ALP, wherein the coordinate bench directed TPO to consider additional evidence submitted by assessee giving analysis of BSE database as per which average rate of return on comparable instruments was 13.66%, the Tribunal held that since the interest paid by assessee during the relevant year at 12% was at ALP. It accordingly deleted the addition in respect of interest on CCDs.

Brahma Center Development Pvt Ltd vs ACIT-TS-658-ITAT-2017(DEL)-TP-ITA no. 1215/del/2017 dated 02.08.2017

162. Where the assessee was charging interest on extended credit period (beyond 90 days) to non-AEs but not to **its** AEs, the Tribunal held that the CIT(A) was justified in making notional interest adjustment on excess credit period allowed to AEs by assessee beyond 90 days.

Ingersoll Rand India Ltd vs DCIT-TS-637-ITAT-2017(BANG)-TP-ITA No. 6&7/bang/2014 dated 02.08.2017

163. The Court, admitted assessee's appeal on TP-issue relating to trade receivables and admitted 2 questions of law (1) whether Tribunal erred in setting aside matter to AO/TPO to verify certain calculations without first adjudicating on the primary legal issue of whether a trade receivable per se could be characterized as an international transaction u/s 92B. (2) whether Tribunal ought to have held that even if a trade receivable per se was to be regarded as an international transaction, it was

inextricably linked to and arose from the transaction of provision of services and therefore the two formed a bundle of transactions, which ought to be benchmarked.

Target Sourcing Services India Pvt. Ltd vs. ACIT-TS-697-HC-2017(DEL)-TP-ITA no. 741/2017 dated 01.09.2017

164. Where the assessee had outstanding receivables from AEs as well as advance to AEs and the TPO made an adjustment of Rs. 2.05 crore at 7.25%, the Tribunal relying on the decision in the case of Bentley Systems [TS-559-ITAT-2015(DEL)-TP] and Cotton Naturals [TS-117-HC-2015(DEL)-TP] held that extending credit period for realization of sales to its AE was a closely linked transaction with the transaction of providing services to the AE and accordingly directed the AO/TPO to determine the ALP in respect of interest on receivables considering it as a closely linked transaction with the provision of services to AE and make necessary TP adjustment at the rate of LIBOR+1% as the arm's length interest rate. Further, in respect of Loans and advances, the Tribunal held that it amounted to an international transaction and directed the TPO/AO to compute the arm's length at LIBOR+1.5%.

Och-Ziff Real Estate India Pvt Ltd vs DCIT-TS-693-ITAT-2017(Bang)-TP-IT(TP)A no. 358/bang/2016 dated 24.08.2017

165. The Tribunal set aside the issue relating to adjustment on account of interest on receivables from AE considering assessee's contention that as a policy, it did not charge interest to unrelated party even in cases where receivables were outstanding for more than 6 months. However, it rejected the assessee's contention that outstanding AE receivables do not constitute an international transaction and held that it would fall under the purview of clause (i)(c) of Explanation to Sec. 92B(1). Accordingly, it directed the TPO to examine the issue afresh in light of assessee's contention while directing assessee to support its contention with documents and working.

AT & T Global Network Services (India) Pvt Ltd vs. DCIT-TS-736-ITAT-2017(DEL)-TP-ITA No. 1059 / del / 2015 dated 18.09.2017

166. Where the TPO had made an addition on account of notional interest on receivables, the Court relying on the decision in the case of Kusum Healthcare Pvt Ltd [TS-412-HC-2017(DEL)-TP] directed the CIT(A) to study the impact of the receivables appearing in the accounts of the assessee, looking into the various factors as to the reasons why the same were shown as receivables and also as to whether the said transactions could be characterized as international transactions.

Avenue Asia Advisors Pvt. Limited vs. DCIT-TS-737-HC-2017(DEL)-TP ITA No. 350 / 2016 dated 18.09.2017

167. The Apex Court admitted Revenue's SLP against High Court order confirming deletion of guarantee fee adjustment for AY 2008-09. The Assessee had charged guarantee fee at 0.53% in respect of bank loan and 1.47% in respect of guarantee for L/C facility obtained by 2 AEs while TPO determined ALP at 3% based on guarantee commission rates charged by banks. The Tribunal, relying on the decision in the case of Everest Kanto Cylinders Ltd, had deleted impugned adjustment holding that bank guarantee was not the same as corporate guarantee which was confirmed by the High Court.

CIT vs Glenmark Pharmaceuticals Ltd-TS-698-SC-2017-TP - I.R. AND IA NO.81058/2017- AND IA NO.81060/2017 dated 08.09.2017

Royalty / Management fees / Intra Group services / Reimbursements

168. Where the TPO had imputed a TP adjustment on account of notional commission income in respect of alleged marketing and distribution activities carried out by the assessee on behalf of its AE who supplied medical devices directly to hospitals in India, the Tribunal, relying on its earlier years order held that since the TPO failed to bring any material on record or to apply any of the approved methods for determining ALP, the addition made being on a notional basis, was invalid. Following the prior year's Tribunal order, it remanded the matter to the AO / TPO to determine ALP by applying one of the prescribed methods.

India Medtronic Pvt Ltd vs ACIT- [TS-531-ITAT-2017(Mum)-TP]- ITA No.812/Ahd/2008 and other three appeals dated 25.05.2017

169. Noting that there was a close nexus between all international transactions undertaken by assessee, the Tribunal held that the aggregation of these transactions with other transactions was required, and the most appropriate method was to adopt TNMM at entity level for the purpose of the bench marking the transactions and accordingly remitted the matter to the file of AO/TPO directing it to aggregate the transactions. The TPO had questioned the payment of benchmarking of payment of management fees and technical fees and held that there was no basis for assessee's adoption of 10% and 15% markup respectively. Accordingly, it made an adjustment which was confirmed by CIT(A). The assessee contended that the TP study report adopting TNMM at entity level was accepted by the TPO and therefore, there was no need of separate bench marking in respect of transactions of royalty and technical fee as the same formed part of operating expenditure. Observing that the Revenue had no objection if the matter was remitted back to the TPO to adopt TNMM at entity level, the Tribunal remanded the matter back to the file of AO/TPO.

Fosroc Chemicals India Pvt Ltd vs. ACIT-TS-572-ITAT-2017(bang)-TP IT(TP)A No.1813/Bang/2013 dated 21.06.2017

170. The Tribunal, rejecting TPO's nil ALP determination in respect of selling commission paid to US/UK AE in respect of ITES orders procured from end customers and passed on to the assessee, remitted the issue of ALP determination to the file of TPO for fresh consideration. It held that ALP could not be nil in view of the fact that assessee procured the entire business from US region only through its AE for which the AE in turn charged the assessee a selling commission of 7% of sale and therefore the actual rendering of service by the AE had been established.

Msource (India) Pvt. Ltd vs. ACIT-TS-581-ITAT-2017(bang)-TP-ITA No. 420/bang/2015 dated 23.06.2017

171. Noting that the Tribunal had followed co-ordinate bench's ruling in assessee's own case for AYs 2007-08 and 2008-09 wherein similar TP-adjustment was deleted allowing aggregation of intra-group services closely linked to manufacturing business under TNMM, the Court, dismissed Revenue's appeal against Tribunal's order holding that there was no substantial question of law for consideration.

Pr. CIT vs Avery Dennison (India) Pvt Ltd-TS-589-HC-2017(DEL)-TP-ITA No. 516/2017 dated 18.07.2017

Pr. CIT vs. Avery Dennison (India) Pvt. Ltd - TS-590-HC-2017(DEL)-TP - ITA 517/2017 dated 18.07.2017

172. Relying on the decision of co-ordinate bench in assessee's own case for AY 2007-08, 2008-09 and 2010-11, the Tribunal remitted to the file of the TPO the ALP determination in respect of royalty paid by assessee to its AE since the AO applying CUP method had not brought any comparables on record to arrive at ALP but had only applied the benefit test to determine the ALP at 'NIL'.

Toyota Kirloskar Auto Parts Pvt. Ltd V. ACIT-TS-636-ITAT-2017(BANG)-TP-IT(TP)A No.

173. Where the assessee availed only certain services out of bunch of services mentioned in an agreement and the TPO did not doubt the arm's length price of the services availed, the Tribunal held that no TP adjustment could be made vis-à-vis the balance services. It held that if the assessee availed only few services of the bouquet of services, the TPO should not reject the TP study on the ground that the assessee did not avail all the services or majority of services as provided in the agreement.

Dimension Data India Private Limited vs DCIT-TS-644-ITAT-2017(Mum)-TP-ITA no. 2280/mum/2016 dated 16.08.2017

174. The Tribunal, rejected TPO's 'NIL' ALP determination for services provided by AE and restored the issue back to the file of TPO for verification and examination of evidence submitted by assessee. It noted that an identical issue for AY 2007-08 was remitted back to AO/TPO and Revenue's appeal against the Tribunal's order was dismissed by the High Court, and in the second round of litigation, Tribunal had again remanded the issue for giving a specific decision. For the relevant year, the Tribunal carried out a prima facie examination of the assessee's agreement with its AE which had an enabling provision for payment by assessee for brief visit of personnel, specialized technical services

management team and held that the assessee had to establish basis for payment along with rendition of services by AE. Accordingly, It held that the TPO/AO was required to examine the evidence produced and give a speaking order.

Fosroc Chemicals India Pvt Ltd vs ACIT-TS-547-ITAT-2017(Bang)-TP-IT(TP)A no. 279/bang/2014 dated 31.05.2017

175. Assessee's parent formed a joint venture with an Indian entity to secure 3 highway projects in India under a contract with NHA and part of the work was allotted to assessee through supplementary arrangement which was reported as international transaction by assessee. Due to a delay in completion of project, the assessee had incurred losses as a result of which, the TPO made an addition to the income of the assessee contending that the transaction was not at ALP. Following the order of the co-ordinate bench for AY 2004-05 to 2007-08 in the assessee's own case, the Tribunal held that where the TPO had accepted the transaction to be at ALP in the hands of the AE, then he could not take a different stand in the case of the other party to the transaction i.e. Assessee herein. Accordingly, it deleted the TP adjustment.

UE Development India Pvt Ltd v DCIT – TS-550-ITAT-2017 (Bang) – TP - IT(TP)A No.1506 /Bang/2012 -dated 14.6.2017

176. Following the order of the co-ordinate bench in the assessee's own case for the prior assessment years, wherein the Tribunal had restored the determination of ALP of the assessee's international transactions (receipt of IT, network engineering, project management, service delivery and other support services from its AE) to the file of AO / TPO (who had determined ALP at Nil), the Tribunal restored the ALP determination to the file of the AO for the impugned year as well as there was no material difference in the facts vis-à-vis the earlier years.

AT & T Global Network Services (India) Pvt. Ltd vs. DCIT-TS-728-ITAT-2017(DEL)-TP dated 18.09.2017

AT & T Global Network Services (India) Pvt. Ltd vs. DCIT-TS-724-ITAT-2017(DEL)-TP dated 21.09.2017

Sale / Issue / Investment in Shares

177. The Tribunal, rejecting TPO/CIT(A)'s recharacterization of subscription of equity share capital of its AE as loan/advance, deleted TP-adjustment of Rs 6.56cr on account of interest on share application money advanced towards subscription of shares in AE (incorporated in British Virgin Island. Noting that shares worth Rs. 462.3 million were allotted to assessee during the year while balance was allotted in subsequent years and assessee remained 100% shareholder in AE prior & post allotment, the Tribunal held that merely because allotment of shares was delayed it would not alter the characterization to the prejudice of the assessee. The percentage of ownership was the only a material factor. As the assessee was the only shareholder in its 100% subsidiary company, it would not make any difference merely because part of the share application money was converted into equity shares and the balance were allotted in subsequent assessment years. It rejected Revenue's submission that Indian Companies Act mandates charging of interest if the company was unable to allot shares within specified time, held that relevant provisions of Indian Companies Act would not be applicable to this case and deferent countries had separate laws/regulations on such issue. Accordingly, it deleted the TP-adjustment on account of interest on share application money advanced towards subscription of shares in AE.

Sun Pharmaceuticals Industries Ltd vs ACIT-TS-596-ITAT-2017(Ahd)-TP-ITA No.3297 & 3420/AHD/2014 dated 16.06.2017

f. **Miscellaneous**

Appeal

178. The Tribunal allowed assessee's miscellaneous petition, modified Tribunal order for AY 2007-08. Noting that the Tribunal had set aside comparability of various companies back to the AO/TPO in the ITeS segment but had , however, omitted to deal with 2 comparables viz., Accurate Data Converters

Private Ltd and iServices India Private Ltd specifically, it remanded the matter back to the AO/TPO directing it to consider these two companies and thereafter make an analysis of pricing of international transaction of the assessee in the ITeS segment.

Hewlett Packard (India) Global Soft P Ltd vs DCIT-TS-552-ITAT-2017(Bang)-TP-IT(TP)A no. 1031/bang/2011 dated 28.03.2017

179. The Tribunal dismissed assessee's miscellaneous petition for AY 2005-06 refusing to interfere with its earlier direction to the AO/TPO for verification of additional evidence filed by assessee and decide whether administrative and business support services for which assessee had made payment were actually rendered by the AE. Assessee had contended that the evidence to prove the service rendition was earlier filed before CIT(A) who had granted relief in this respect and thus, remand to the AO / TPO for verification was unwarranted. Noting that nothing was discernable from the CIT(A) order and that the evidence on record did not conclusively prove that services were actually rendered by AE it upheld the remand of the Tribunal. Since there was no finding by lower authorities as evidence was not filed before it by the assessee, it also observed that the jurisdiction of the CIT(A) on issue involving facts could be exercised only if there was a finding by lower authorities. The CIT(A) could only give a finding on the correctness or otherwise of finding of lower authorities. Accordingly, it held that there was no mistake apparent from the record in the Tribunal order **requiring** modification. It held that in the proceedings u/s 254, the final conclusion reached by the Tribunal in the earlier order was not to be disturbed.

3M India Ltd vs ACIT-TS-532-ITAT-2017(Bang)-TP-MP No. 42/bang/2017 dated 31.03.2017

180. The Tribunal allowed assessee's miscellaneous petition seeking rectification of Tribunal's order on the ground of non-consideration of 4 out of 5 additional grounds raised by assessee. Noting that only 1 additional ground pertaining to inclusion of 2 comparables viz., Guindy Machine Tools Ltd and United Drilling Tools Ltd had been considered by Tribunal, it restored the matter back to the file of AO/TPO for fresh consideration in respect of adjustment made by AO/TPO to the same class of international transaction twice, not providing an adjustment to the operating cost mark-up for difference in working capital of assessee vis-à-vis the comparables, considered non-comparable companies, Electronics Machine Tools Ltd. and Kulkami Power Tools Ltd. as comparable while determining the arm's length price as the aforementioned companies failed functional and other criteria.

Molex India Tooling Pvt. Ltd vs. ACIT-[TS-538-ITAT-2017(Bang)-TP]-IT(TP)A No. 1494 (bang)/2010 dated 28.04.2017

181. The Tribunal admitted additional grounds pertaining to benchmarking of international transactions in the Trading Segment adopting RPM as the most appropriate method as opposed to TNMM adopted by the CIT(A) on the ground that it **was** legal in nature. **Accordingly, it** remitted the issue to the file of AO/TPO for considering the benchmarking of international transaction of trading activity and directed the AO/TPO to grant a reasonable opportunity of being heard in accordance with the principles of natural justice.

Fresenius Kabi India Private Limited vs DCIT-TS-625-ITAT-2017(PUN)-TP-ITA No.235/pun/2013 dated 16.06.2017

182. The Tribunal, noting that since the coordinate bench of the Tribunal in a series of rulings in the cases of AMD India, GT Nexus Software & Quark Systems had examined functional comparability of E-Infochips, Acropetal Technologies, ICRA Techno Analytics and E-Zest Solutions even though the assessee did not raise a specific issue of functional dissimilarity before the authorities, as the assessee had made out prima facie case for raising this issue of functional comparability of these four companies, in the instant case, the Tribunal admitted the additional ground and remanded the comparability of **the aforesaid companies** to the file of AO/TPO for examination/ verification of functional comparability.

Fortinet Innovation Centre India Pvt. Ltd (formerly known as Meru Networks India Pvt. Ltd) vs. ITO-TS-617-ITAT-2017(BANG)-TP dated 28.07.2017

183. Noting that since the assessee was taken over by Canara Power Projects Group and entire managing team had quit the office while a new team was yet to be in place, required documents could not be

filed before DRP/TPO, the Tribunal admitted additional evidence filed by assessee even though application for admission of such evidence was made for the first time before Tribunal. Although no records were maintained by the assessee and TP study was not filed before TPO/DRP, the Tribunal held that the assessee had vide letter dated November 11, 2013 explained that the entire management team along with the Company Secretary had left the office and new management had taken over the assessee and in view of the that necessary documents had not been furnished before the TPO. Accordingly, the Tribunal held that the it was justified to accept the additional evidence and remanded the matter back to the file of TPO for examination after granting the assessee a personal hearing.

Conergy Energy Systems Private Limited (formerly known as Sun Technics Energy Systems Pvt Ltd) vs ACIT-TS-604-ITAT-2017(BANG)-TP-IT(TP)A no.584/bang/2015 dated 22.03.2017

184. Relying on the decision in the case of Desa Singh vs Ajit Singh where it was held that normally when appellants was not represented, the Court would dismiss it for default and not go into merit in detail, the Tribunal dismissed assessee's appeal for non-prosecution/dismiss in default as no one appeared on behalf of assessee to argue the case.

MModal Global Services Private Limited vs ITO-TS-615-ITAT-2017(Bang)-TP-ITA No. 1351/bang/2011 dated 17.05.2017

185. Noting that the substantial question of law framed in the said order wrongly pertained to quantum appeal instead of the appeal against penalty, it deleted the earlier 4 questions framed relating to TP-addition of Rs. 5.86 crores, validity of reference to TPO in respect of mere reimbursement and secondment of employees and framed the following questions-(a) Whether on the facts and in the circumstances of the case and in law the Tribunal was right in confirming the levy of penalty of Rs.2,05,26,780/under section 271(1)(c) of the Act. (b) whether the Tribunal was right in holding that the revised return filed was invalid. (c) whether the Tribunal was right in holding that the Appellant had not offered any explanation towards claim of Rs. 5.86 crores as expenditure or deduction u/s 10A of the Act. (d) whether on facts and in circumstances of the case and in law the order of Tribunal was perverse and liable to be quashed.

Deloitte Consulting India Pvt Ltd vs ACIT-TS-605-HC-2017(BOM)-TP-ITA NO 107 of 2015 dated 27.07.2017

186. The Tribunal allowed the assessee's miscellaneous application (relating to deductibility of license fee) for AY 2003-04 as it had restored the matter to the file of AO following assessee's own case for AY 2002-03, ignoring the fact that the exact same issue had been decided in favour of the assessee **by the High Court** for AY 2001-02. It held non-consideration of the jurisdictional HC judgment by Tribunal in case of assessee constituted a mistake apparent from record and accordingly, directed the rectification of the Tribunal order and refixed the matter before Regular bench to hear the case afresh.

Star India Pvt. Ltd vs ACIT-TS-639-ITAT-2017(Mum)-TP-MA no. 329/mum/2016 dated 21.07.2017

187. Where the assessee had produced before the Court a detailed chart explaining the approach of the TPO, DRP and the Tribunal in respect of determination of ALP for each of the segments which proved that all facts were available on record before the Tribunal, the Court noting that the Tribunal had failed to render a finding, directed the Tribunal to decide TP-issues without remanding matter for de-novo adjudication.

Bechtel India Private Limited vs DCIT-TS-606-HC-2017-ITA No 97/2017 dated 25.07.2017

188. Where the CIT(A) had elaborately considered both the internal as well as external benchmarking analysis and come to a definitive conclusion that TP adjustment was unwarranted, the Court rejected Revenue submission that the AO ought to have made reference to TPO and that the CIT(A) had no power in exercise of its appellate jurisdiction, to undertake a TP analysis. Accordingly, the Court, upheld Tribunal's order refusing to adopt earlier year's comparables without undertaking proper analysis. Noting that the Revenue had not contended before the Tribunal that the CIT(A) ought to have remanded the matter to the file of the TPO rather than adjudicating it himself, the Court held that the Revenue could not be permitted to raise such ground at this stage.

Pr. CIT vs. Interra Infotech (India) Pvt. Ltd.-TS-669-HC-2017(DEL)-TP-ITA no. 250/2017 dated 25.08.2017

189. The Tribunal, noting that during the course of the proceedings no one appeared on behalf of the assessee nor any application to seek adjournment was filed even though notice was duly served on the assessee, dismissed assessee's appeal for non-prosecution for AY 2012-13.
Advice America Software Development Center Pvt Ltd vs DCIT-TS-763-ITAT-2017(Bang)-TP dated 06.09.2017
190. The Tribunal, allowed Revenue's miscellaneous petition against its earlier order. Noting that the Revenue had contended for inclusion of 2 companies (RS Software India Limited and Mindtree Limited) on the ground of functional comparability but the Tribunal had not adjudicated on the issue, and no objection was raised by the assessee vis a vis the inclusion of the two comparables, the Tribunal, directed the AO/TPO to include the aforesaid comparables for determining the arm's length price (ALP).
ITO vs Arcot R&S Software Pvt Ltd-TS-692-ITAT-2017(Bang)-TP-M.P.No. 92/bang/2017 [IT(TP)A no. 393/bang/2015 dated 24.08.2017
191. The Tribunal, noting that no one appeared on behalf of the assessee even though notice was duly served on it fixing appeal hearing for August 21, 2017, dismissed assessee's appeal for non-prosecution under rule 19(2) of Income Tax Appellate Tribunal Rules.
Indeca Sporting Goods Pvt. Ltd vs. DCIT-TS-713-ITAT-2017(Bang)-TP-IT(TP)A no. 445/bang/2017 dated 21.08.2017
192. The Tribunal allowed assessee's miscellaneous petition seeking recall of ex-parte Tribunal order. Noting assessee's submission that it was unable to appear before the Tribunal on the hearing date as the notice was misplaced since it was delivered on a weekend & collected by the security person, the Tribunal held that there was reasonable cause for non-appearance of the assessee on the appointed date and accordingly recalled the ex-parte order and fixed appeal hearing on December 5, 2017.
Salesforce.com India Private Limited vs DCIT-TS-761-ITAT-2017(Bang)-TP-MP no.160/bang/2017 dated 08.09.2017
193. The Tribunal partly allowed assessee's miscellaneous petition and recalled Tribunal's order for the limited purpose of adjudicating working capital adjustment not adjudicated earlier. Further, it dismissed assessee's contention that the comparability of Evoke was not to be remanded to the lower authorities as neither did the DRP nor the TPO object to the inclusion of this comparable and held that there was no mistake apparent from records as the Tribunal held that all comparables were to be reexamined.
Obopay Mobile Technology India P. Ltd vs DCIT-TS-710-ITAT-2017(Bang)-TP- Misc Petition No.145/Bang/2017 dated 11.08.2017
194. The Tribunal, dismissed second miscellaneous petition filed by Revenue against Tribunal order for AY 2005-06 as it was time barred. It held that as per the amended provisions of section 254(2), assessee/Revenue could file a miscellaneous petition within 6 months from the end of the month in which order was passed by the Tribunal and since the Tribunal order against which the petition was filed was passed on August 11, 2016, the miscellaneous petition filed on May 29, 2017 was time barred.
DCIT vs Swiss' Re Shared Services (India) Pvt Ltd-TS-721-ITAT-2017(Bang)-TP- M§ No. 159/Bang/2017 (in IT(TP)A No. I 72/Bang/2012) dated 18.08.2017
195. The Court dismissed the appeal filed by the assessee owing to extraordinary delay of 439 days and rejected the assessee's justification that the delay occurred since it was pursuing an alternate remedy by way of filing a miscellaneous application before the Tribunal for the exclusion of Bodhtree as comparable. It held that an application under Section 254(2) of the Act is for rectifying mistakes apparent from record which is much narrower in scope than an appeal before the Court under Section 260A. Therefore, it held that the time period for filing an appeal under Section 260A would not get suspended on account of pendency of miscellaneous application filed before the Tribunal.

Agnity Technologies Pvt Ltd vs CIT-TS-729-HC-2017(DEL)-TP- ITA 939/2016 dated 19.09.2017

196. The Tribunal dismissed assessee's miscellaneous petition against Tribunal's order for AY 2007-08. Noting that the Tribunal (vide order dated February 10, 2011) had decided the issue considering the explanation to section 92C(2) which provided that the second proviso to section 92C(2) was applicable to all proceedings pending before the AO on 1.10.2009, it held that since the proceedings for subject AY were pending as on 1.10.2009 and accordingly, there was no apparent mistake in the order of Tribunal.

Insilica Semiconductors India Pvt Ltd-TS-709-ITAT-2017(Bang)-TP- "rvr.P.No. 1211Bang/2017 (in IT(TP)A No. 1 I 17/Bang/2013) dated 18.08.2017

197. Where the CIT(A) had not examined and decided the issue of functional dissimilarity in respect of 9 companies against which the assessee had raised objections, the Tribunal remitted the matter to the file of CIT(A) for fresh adjudication. Further, in respect of 0% RPT filter, it held that the CIT(A) was not justified in applying 0% RPT filter suo-moto as no comparables were available. It held that a reasonable tolerance range of 5% to 25% depending on facts and circumstances of the case should be applied.

ITO vs iPass India Pvt Ltd-TS-751-ITAT-2017(Bang)-TP- I.T.(T.P)A. No.526/Bang/2012 dated 31.08.2017

198. The Tribunal dismissed assessee's miscellaneous petition (MP) seeking to modify Tribunal's order for contending that the Tribunal in the impugned order had discussed the comparability of several companies but failed to render finding thereon. Noting that the assessee had filed a single application for rectification of the order even though the original appeal was filed by both assessee and Revenue as cross appeals, it held that the minimum requirement of law is that separate applications are required to be filed in respect of each appeal. Since the fact of the defect was intimated but the assessee had chosen not to rectify the same, it dismissed the Miscellaneous application filed by assessee as defective.

IDS Software Solutions India Pvt Ltd vs DCIT-TS-759-ITAT-2017(Bang)-TP- Misc. Petn.No.138/Bang/2017 dated 15.09.2017

Assessment/Reassessment

199. The Tribunal allowed Revenue's appeal against CIT(A)'s order for AY 2005-06 and remitted the entire TP-issue back to CIT(A) for fresh decision. Noting that CIT(A) had restored the comparability of certain functionally dissimilar companies back to the file of AO/TPO. It held that the entire matter had to go back to the file of CIT(A) for a fresh decision **as the CIT(A) should have decided the matter himself instead of restoring it to the file of AO.** Further, it rejected Rs. 1-200 cr turnover filter applied by CIT(A) on the ground that the Tribunal had been consistently adopting a filter of 1/10th to 10 times the assessee's turnover.

ITO vs Intellinet Technologies India Pvt Ltd-TS-527-ITAT-2017(Bang)-TP-ITA No. 1613/bang/2013 dated 09.06.2017

200. The Tribunal, noting that the assessee had raised TP-grounds/additional grounds relating to comparability analysis, risk adjustment, application of various filters, restored TP-issues back to the AO/TPO for fresh adjudication for AY 2007-08 and 2008-09 **as** DRP's order was not speaking and reasoned.

Target Corporation Ltd vs. DCIT-TS-546-ITAT-2017(Bang)-TP- IT(TP)A Nos.1561 & 1562(B)/2012 dated 09.06.2017

201. Noting that the AO had not given effect to DRP directions while passing the final assessment order to exclude ICC International Agencies Ltd from the list of comparables, the Tribunal dismissed Revenue's appeal for AY 2011-12 and held that an appeal before the Tribunal was maintainable only when the final assessment order was passed in pursuance of and conformity with the directions issued by DRP. Referring to the provisions of section 144C it held that AO/TPO was bound to give

effect to DRP's directions irrespective of the fact whether the same are acceptable to the Revenue or not and thus dismissed the appeal.

DCIT vs Coriant Communication India Pvt Ltd-TS-543-ITAT-2017(BANG)-TP-IT(TP)A No.652/Bang/2016 dated 02.06.2017

202. The Tribunal, noting that the DRP had not considered assessee's ground regarding TPO wrongly invoking provisions of section 92CA as the reference under the section was void ab initio being invoked without satisfying the conditions therein, directed TPO to decide that aspect first, remitted the TP-issue back to the file of AO/TPO for fresh decision. Further, it held that since the main issue relating to TPO's decision to invoke the provisions of section 92CA was yet to be decided, the other grounds relating to TP adjustment of Rs. 2.34crores should also be decided afresh by the AO/TPO after deciding the technical aspect of the matter regarding validity to invoke the provisions of sec.92C(3)(c) of the Act, 1961 and accordingly, remitted the same.

Maxim India Integrated Circuit Design Private Ltd v DCIT-TS-519-ITAT-2017(BANG)-TP- IT(TP)A No. 1660(B)2016 dated 04.04.2017

203. The Tribunal, relying on the decision in the case of International Air Transport Association [TS-62-HC-2016(BOM)-TP] and Zuari Cement Ltd vs ACIT[TS-271-HC-2013(AP)-TP] dismissed Revenue's appeal against CIT(A) order quashing final assessment order passed by AO without passing draft order on the ground that a final assessment order, not preceded by draft order was without jurisdiction, null, void and unenforceable. Noting that the TPO had made an adjustment after which AO passed the final assessment order u/s 143(3) without the draft order mandated u/s 144C(1), it held that the final assessment order was in violation of provisions of section 144C and therefore liable to be quashed.

DCIT vs Fiat India Automobiles Limited-TS-560-ITAT-2017(PUN)-TP-ITA No. 853/PUN/2015 dated 13.04.2017

204. The Apex Court dismissed the Revenue's appeal against the order of the High Court wherein the High Court set aside the order of the TPO passed without giving the assessee an opportunity to cross-examine the authorized personnel of companies whose segmental data had been relied on for arriving at ALP.

DCIT v Cashedge India Pvt Ltd – TS-593-SC-2017-TP-IA no. 53300/2017 dated 21.07.2017

205. The directions from DRP were received by AO on 29.12.2015 who was required to pass final assessment order on or before 31/01/2016, however the final assessment order was passed by AO on 18/02/2016 which was beyond the period to period prescribed u/s 144C(13) (i.e one month from the end of the month in which directions from DRP were received by AO). The Tribunal applying the provisions of section 144C, dismissed assessee's preliminary ground for quashing final assessment order passed beyond the time limit prescribed u/s 144C (13) pursuant to DRP directions for AY 2011-12 and held that AO did not have any discretion while passing the assessment order except to follow the directions of DRP and therefore it was not a jurisdictional issue. It held that since the fate of the proceedings initiated u/s 143(2) r.w.s. 144C was well known to the assessee as DRP had already passed the directions along with a copy to assessee, no prejudice was caused to assessee. Further relying on the decision in the case of Rain Cements, it distinguished the language of section 153 which expressly prohibited passing order beyond the prescribed therein, and held that section 144C did not provide for such issue and therefore the proceedings could not be declared null and void.

The Himalayan Drug Co vs DCIT-TS-566-ITAT-2017(Bang)-TP-ITA No. 807/bang/2016 dated 21.06.2017

206. The Tribunal, noting that the DRP had not discussed the functional profile of each company sought to be excluded or included by assessee individually, remitted the matter to the file of DRP for fresh adjudication after providing an adequate opportunity of being heard to the assessee. Further, in respect of assessee's ground on rejection of TP documentation and use of incorrect data/ information in ALP computation, it held that since assessee had filed a rectification application which was pending

before the DRP, it should not have raised the ground before Tribunal, **accordingly** it directed the DRP to adjudicate these grounds on merits.

Symphony Marketing Solutions India P Ltd vs ITO-TS-582-ITAT-2017(BANG)-TP-I.T.(TP)A no.336/bang/2015 dated 16.06.2017

207. The Tribunal relying on the decision in assessee's own case for AY 2011-12, held that where the amalgamating company was not in existence when the assessment order was passed, the assessment was void ab initio. It held that amalgamating company i.e. M/s. Suzuki Powertrain India Ltd. was not in existence on the date of passing Assessment Order. Hence, the Assessment proceedings as well as the Assessment order itself were not valid. Accordingly, it quashed the assessment framed in the name of erstwhile entity (i.e. Suzuki Powertrain India Ltd.) which amalgamated with the assessee (Maruti Suzuki India Ltd) for AY 2012-13.

Maruti Suzuki India Ltd. (As Successor in interest of erstwhile M/s. Suzuki Powertrain India Ltd- Since Amalgamated) vs. DCIT-TS-600-ITAT-2017(DEL)-TP-ITA No. 902/del/2017 dated 06.04.2017

208. Where the TPO/DRP proposed an adjustment in the assessee's manufacturing segment on the basis that segmental/sub-segmental accounts were required to be statutorily audited and allocation of interlaced expenses was not properly done, the Tribunal remitted the matter to the file of AO/TPO observing that rulings relied on by assessee regarding non-requirement of furnishing audited segmental/sub-segmental accounts were ignored by TPO/DRP and opined that DRP should have given reasons as to how the TP study demanded auditing of assessee's accounts.

Fresenius Kabi India Private Limited vs DCIT-TS-625-ITAT-2017(PUN)-TP-ITA No.235/pun/2013 dated 16.06.2017

209. The Tribunal restored the determination of ALP in respect of assessee's international transactions of marketing and support services for the purpose of external commercial borrowings (ECB) issued by assessee's head office to the TPO as the TPO proposed an adjustment without issuing show-cause notice to assessee. It held that the TPO's action was in violation of principles of natural justice and that the CIT(A) should have adjudicated the issue after calling for the remand report from TPO which was not done in the instant case. Accordingly, it restored the matter to the file of TPO.

DDIT vs The Bank of Tokyo Mitsubishi UFJ Ltd-TS-634-ITAT-2017(DEL)-TP-ITA No. 3754/del/2014 dated 03.08.2017

210. The Court allowing assessee's writ petition, set aside the final assessment order passed by AO without first issuing draft assessment order as mandated by section 144C. Noting that in the first round of proceedings, Tribunal had remanded TP issues in respect of assessee to the file of TPO and directed to pass a speaking order after considering the additional details filed by assessee. The TPO then undertook a fresh benchmarking analysis and passed an order dated 31st March, 2017 proposing an adjustment of Rs. 1,19,49,680/- to the Arm's Length Price ('ALP') determined by the assessee. The AO passed a final assessment order on 11th May, 2011 instead of passing a draft assessment order. Applying the provisions of section 92CA(3) of the Act, the Court held that it was incumbent upon the AO to pass a draft assessment order under section 144C of the act which was overlooked by the AO depriving the assessee of an opportunity of questioning the draft assessment order under section 144C of the act before the DRP.

Control Risks India Pvt Ltd vs DCIT-TS-603-HC-2017(DEL)-TP-W.P.(C) 5722/2017 & C.M.NO.23860/2017 (stay) dated 27.07.2017

211. The Tribunal, noting that the AO passed a draft assessment order u/s 143(3) r.w.s 144C but also issued a demand notice and initiated penalty proceedings held that the assessment order passed was invalid in law. The procedure laid down in section 144C had not been followed. It held that the draft AO order issued was as good as a final AO order as it was accompanied with a notice of demand which was in contravention to the provisions of Section 144C which provides that the AO was obliged to first pass a draft order and then a final order after the assessee selected its preferred remedy i.e. DRP or CIT(A). Therefore, it quashed the draft assessment order.

DCIT vs Rehau Polymers Pvt. Ltd-TS-642-ITAT-2017(PUN)-TP-ITA no. 566/PUN/2015 dated 14.06.2017

212. The Court, upheld Tribunal's order quashing of assessment order for AY 2009-10 making transfer pricing adjustment without following DRP procedure laid down u/s 144C. It rejected revenue's contention that it was a mere procedure and thus a curable defect. Referring to the provisions of section 144C which provide that the AO shall forward a draft of the proposed order of assessment to the assessee if any variation was proposed in income or loss which may be prejudicial to the assessee, it held that the statutory provisions made it abundantly clear that the procedure was of great importance and mandatory. Such an opportunity could not be taken away by treating it as purely procedural in nature.

CIT vs C-Sam (India) Pvt Ltd-TS-626-HC-2017(GUJ)-TP dated-ITA No. 542 of 2017 31.07.2017

213. The Tribunal upheld the DRP's power to propose TP adjustment (in respect of intra-group services) despite AO/TPO not proposing such adjustment in the draft order and rejected the assessee's contention that DRP overstepped its jurisdiction. Referring to section 144C(8) read with the explanation (inserted retrospectively FROM April 1 2000), it held that the DRP's power was co-terminus with that of the AO/TPO and opined that if the language of the provision was read as disabling the DRP to exercise the power of enhancement, it would amount to diluting the power, which the statute had expressly granted. The Tribunal rejected assessee's contention that the only remedy for mistakes in draft order was by revision u/s 263.

Bausch & Lomb India Pvt. Ltd vs ACIT-TS-667-ITAT-2017(DEL)-TP-ITA NO. 1399/DEL/2017 dated 25.08.2017

214. The Court confirmed Tribunal's order for AY 2009-10, holding that AO exceeded the jurisdiction by making new disallowance while passing order u/s 144C(13) giving effect to DRP directions when such disallowance had not emanated from the draft assessment order or from the directions of DRP.

CIT vs Sanmina SCI India Pvt. Ltd. -TS-643-HC-2017(MAD)-TP-567 of 2016 dated 08.08.2017

215. Where the AO made a reference to the TPO without providing an opportunity of being heard to the assessee or passing a reasoned order, the Court held that though the CBDT instruction No. 2/2016 dated March 10, 2016 was issued subsequent to AO's decision to refer the matter to TPO, the applicability of principles of natural justice and requirement of AO to decide on a jurisdictional fact could not be circumvented. Accordingly, it set aside the reference made by AO to TPO.

PCM Strescon Overseas Ventures Ltd vs DCIT-TS-666-HC-2017(CAL)-TP-WP no. 214 of 2016 dated 11.08.2017

216. Where the grounds of appeal filed by the Revenue did not emanate from the DRP order, as no directions were issued therein by the DRP as alleged by Revenue in its grounds, the Tribunal dismissed the appeal of the Revenue.

DCIT vs Subex Ltd-TS-569-ITAT-2017(Bang)-TP-IT(TP)A No.239/Bang/2014 dated 31.05.2017

217. Relying on the decision in the case of Turner International India Pvt Ltd [TS-400-HC-2017(DEL)-TP], wherein it was held that it was mandatory for the AO to pass the draft assessment order u/s 144C prior to issuing final assessment order, the Court held that even where the Tribunal had remanded the matter, the AO ought to have passed the draft assessment order under section 144C. Further, it held that section 292B of the Act cannot save an order not passed in accordance with the provisions of the Act since it was an incurable illegality. Accordingly, it held that the final assessment order passed by the AO was without any jurisdiction.

JCB India Ltd vs DCIT-TS-706-HC-2017(DEL)-TP W.P. (C) No. 3399/2016 - dated 07.09.2017

218. The Tribunal set aside the CIT's order u/s 263 wherein the CIT held that that since assessee had not entered into international transaction, the last date for filing of return of income was September 30 as opposed to November 30 and directed the AO to pass a consequential order. It observed that the assessee had disclosed transaction of 'reimbursement paid/payable by AE' in the annexure to Form No. 3CEB and similar transaction was also considered as an international transaction by the TPO for

subsequent AY. Further, it also noted that the CIT confused the disclosure of the reimbursement with another note to return referring to issue of shares at a premium. Accordingly, it concluded that the assessee's return filed on November 28, 2011 was well within the due date.

Bangla Entertainment Private Limited vs Pr. CIT-TS-674-ITAT-2017(KOL)-TP dated 23.08.2017

219. The Tribunal, allowed Revenue's appeal challenging CIT(A)'s direction to AO/TPO to re-compute/reconsider ALP determination without discussing merits of the case. It held that it was incumbent upon the CIT(A) to adjudicate the issue and it was beyond its scope to set aside the matter to the file of AO for recalculation. Accordingly, the Tribunal remanded the matter back to the file of CIT(A) to adjudicate the issue after giving the assessee an opportunity of being heard.

DCIT vs. Wipro GE HealthCare Ltd-TS-712-ITAT-2017(Bang)-TP-IT(TP)A no. 1392/bang/2013 dated 18.08.2017

220. The Court, dismissed Revenue's appeal against Tribunal's order wherein the assessment made by the AO was quashed being void, as it was made in the name of the erstwhile non-existing entity which was amalgamated with Maruti Suzuki India Ltd w.e.f april 1 2012.

Pr CIT vs. Maruti Suzuki Ltd (Successor of Suzuki Powertrain India Ltd)-TS-690-HC-2017(DEL)-TP- ITA No. 65/2017 dated 04.09.2017

221. The Tribunal set aside DRP's cryptic & non-speaking order on TP-issues for assessee providing data management services to AEs, since the order of DRP was cryptic and not a speaking / reasoned order.

Symphony Marketing Solutions India P Ltd -TS-734-ITAT-2017(Bang)-TP-I.T(TP).A No.336/Bang/2015) dated 16.06.2017

222. Since there was a discrepancy in the turnover reflected in the assessee's Transfer Pricing study (Rs.3.97 crore) and value of international transaction in the additional ground of appeal filed by the assessee (Rs. 6.13 crore), the Tribunal remitted the matter to the AO / TPO for re-consideration noting the assessee's submission that a fresh Transfer Pricing study had to be conducted due to the aforesaid error.

Gameloft Software Private Limited vs ACIT-TS-660-ITAT-2017(HYD)-TP-ITA No.25 of 2012 dated 08.09.2017

MAP / APA

223. The Tribunal dismissed assessee's appeal as the TP issues were already resolved under MAP proceedings as per which relief of Rs 49.39 crores was allowed from TP adjustment.

Texas Instruments (India) Pvt Ltd vs DCIT-TS-524-ITAT-2017(Bang)-TP-IT(TP)A nos. 1478/bang/2010 and 1603/bang/2014 dated 19.05.2017

224. The Tribunal dismissed assessee's appeal as the TP issue relating to technical assistance fee was already resolved under MAP proceedings as per which relief of Rs 9.89 crores was allowed from TP adjustment.

Toyota Kirloskar Auto Parts Pvt. Ltd vs Dy.CIT-TS-563-ITAT-2017-TP-ITA No. 118/bang/2014 Dated 03.05.2017

225. Where the assessee had accepted a margin of 24% under MAP resolution for USA transactions (2/3rd of the total transactions) and contended that the margin was 10.1% for the remaining 1/3rd non-US transactions was at ALP, the Tribunal held the onus to bring out the distinction between the USA Transactions and the non-USA Transactions and to make out a case for adopting different margins as ALP for the USA and Non-USA Transactions was on the assessee. Further, it desisted from applying the ratio of CGI Information Systems and Management Consultants Pvt wherein the Tribunal had applied the margin for USA transactions to non-USA transactions, highlighting that the percentage of non-USA transactions in that case was only 4% as against 33.33% in the present case. Accordingly, it remanded matter back to CIT(A) to decide whether the profit margin under USA MAP needs to be applied to non-USA transactions in case of ITeS provider.

Global e-Business Operations Pvt. Ltd. vs. DCIT-TS-654-ITAT-2017(Bang)-TP dated 26.07.2017

226. The Tribunal, noting that application for resolution of TP issues was filed under Mutual Agreement Procedure (MAP), allowed assessee's appeal for statistical purposes for AY 2007-08 and held that nothing was required to be adjudicated in respect of the TP issues.
Flowserve India Controls P. Ltd vs DCIT-TS-665-ITAT-2017(Bang)-TP-IT(TP)A no. 1623/bang/2012 dated 23.08.2017
227. The Tribunal admitted assessee's additional ground on exclusion of Wirpo BPO and Maple eSolution for AY 2005-06. Further, relying on the decision in assessee's own case for AY 2004-05, it directed the CIT(A) to determine whether the profit margin adopted under USA MAP could be applied to non-USA transactions since the assessee as well as TPO had benchmarked both set of transactions together. In respect of comparables, it remitted Vishal Information Technologies Ltd and Wipro BPO Ltd to the file of CIT(A) for verifying the functional comparability vis a vis the assessee.
DCIT v Global e-Business Operations Pvt. Ltd.-TS-726-ITAT-2017(Bang)-TP-JT(TP)A No.298/Bang/2014 dated 16.08.2017
228. The Tribunal, considering assessee's submission that its entity level PLI was 6.43% as against PLI of 4.5% agreed in Advance Pricing Agreement (APA), remitted the TP issue to the file of AO to verify the claim of the assessee. It noted that assessee had entered into an APA with CBDT on February 2, 2017 under which appropriate PLI was agreed to be operating profit margin to sales and arm's length margin was agreed at 4.5% and that APA contained provisions for rollback from AY 2010-11 to AY 2013-14, thus covering the subject AY 2012-13.
DIC Fine Chemicals Pvt. Ltd vs. DCIT-TS-683-ITAT-2017(Kol)-TP-ITA no. 446/kol/2017 dated 25.08.2017
229. The Tribunal, noting that Competent authorities of India and USA had agreed upon a framework to resolve pending TP cases relating to AY 2008-09 pursuant to which relief of Rs. 65.58 crores had been computed w.r.t adjustment made by TPO in respect of international transactions of IT enabled customer care and employee care support services segment, it set aside TP-issue to the file of AO to be adjudicated in accordance with MAP.
ACIT vs Convergys India Services Pvt. Ltd-TS-695-ITAT-2017(DEL)-TP-ITA No. 2194/del/2014 dated 31.08.2017
230. The Tribunal, noting that application for resolution of TP issues was filed under Mutual Agreement Procedure (MAP), allowed assessee's appeal for statistical purposes for AY 2008-09 and held that nothing was required to be adjudicated in respect of the TP issues.
Flowserve India Controls P. Ltd vs. DCIT-TS-714-ITAT-2017(Bang)-TP-IT(TP)A no. 1623/bang/2012 dated 23.08.2017
231. The Tribunal, noting that assessee withdrew TP grounds because of the settlement of dispute under Mutual Agreement Procedure (MAP), dismissed cross appeals filed by Revenue and Assessee as withdrawn.
GKN Driveline (India) Ltd vs DCIT-TS-739-ITAT-2017(DEL)-TP-ITA No. 1416/del/2015, 1616/del/2015 and 843/del/2016 dated 12.09.2017
232. The Tribunal, noting assessee's submission that underlying issues were resolved bilaterally though India-USA MAP proceedings which was given effect to by AO & and that the Revenue had no objection against assessee's withdrawal of grounds, allowed the assessee to withdraw appeal for AY 2007-08.
Quintiles Research (India) P Ltd vs DCIT-TS-732-ITAT-2017(bang)-TP- I.T(TP).A No.1162/Bang/2011 dated 22.09.2017
233. Where the underlying transfer pricing issues were resolved bilaterally though India-USA MAP proceedings which was given effect to by the AO, the Tribunal, noting and that the Revenue had no

objection against assessee's withdrawal of grounds, allowed the assessee to withdraw appeal for AY 2006-07

Quintiles Research (India) P ltd vs DCIT-TS-755-ITAT-2017(bang)-TP- I.T(TP).A No.2/Bang/2011 dated 22.09.2017

Penalty

234. The Tribunal upheld CIT(A)'s order deleting penalty levied u/s 271AA by TPO for failure to maintain the prescribed TP documentation for AY 2005-06. The Revenue had contended that the assessee had not maintained transfer pricing documentation as required under rule 10B of the Act to which the assessee argued that the TPO had not made any adjustment relating to the international transaction and therefore levy of penalty was unjustified. Relying on the coordinate bench's ruling in assessee's own case it held that since no adjustment was made with respect to international transaction, levy of penalty u/s 271AA was not justified. Accordingly, it deleted the penalty levied u/s 271AA of the Act.

DCIT vs Indian Additives Express High Way-TS-525-ITAT-2017(CHNY)-TP-I.T.A No.649/mds/2017 dated 06.06.2017

235. The Apex Court dismissed Revenue's SLP against Delhi High Court order confirming deletion of concealment penalty on TP adjustment made vis-à-vis assessee's intra-group services. The TPO had made an adjustment in respect of three international transactions of availing specified business and consultancy services, engineering support services and management services by determining the ALP at 'NIL' under CUP method contending that the assessee did not avail any services from its AEs as no benefit was shown to have been received. The AO imposed a penalty of Rs. 1.20 crores u/s 271(1)(c) on the ground of concealment of income or furnishing of inaccurate particulars. The Tribunal, noting that the assessee had satisfied the requisite conditions of good faith and due diligence as stipulated in explanation 7 of sec 271(1)(c) held that non-filing of quantum appeal could not be a reason for levy of concealment penalty. Rejecting Revenue's contention that failure to substantiate benefit derived from services resulted not only in rejection of TNMM but also in reduction of losses and thus application of explanation 7 to section 271(1)(c) was warranted, the Court held that the provision should be applied on case to case basis and could not be generalized. Accordingly, it concluded that the Tribunal had not committed any error of law.

Pr. CIT vs Mitsui Prime Advanced Composites India Pvt Ltd-TS-599-SC-2017-(TP)- ITA No. 913/2016 dated 21.07.2017

236. Where the assessee failed to furnish document/information u/s 92A(1) based on a bonafide belief that since both conditions u/s 92A(1) and (2) were not fulfilled, no international transaction had been undertaken, the Tribunal held that penalty u/s 271BA could not be imposed as the view of the assessee was a possible one and amount to reasonable cause as provided in section 273B.

Palm Grove Beach Hotels Pvt. Ltd vs DCIT-TS-631-ITAT-2017(Mum)-TP-ITA No. 5217/mum/2015 dated 09.08.2017

237. Where the assessee had provided relevant information during the assessment proceedings based on which AO completed the assessment, the Tribunal deleted the penalty u/s 271G (imposed on failure to furnish information or document u/s 92D) and held that penalty was attracted only when the AO had issued a notice u/s 92D(3) and the assessee failed to furnish information for completing the assessment. Since in the present case the assessee had already filed the relevant information as soon as it was brought to its notice and assessment was completed without any adjustment, the levy of penalty was unwarranted.

Karvy Computershare pvt. Ltd vs ACIT-TS-670-ITAT-2017(HYD)-TP-ITA No. 737, 738, 739 and 740/HYD/2016 dated 07.07.2017

238. The Tribunal upheld the levy of penalty under Section 271BA (for non filing of Form 3CEB as per Section 92E) and held that mere ignorance of the finance manager was not reasonable cause for not filing Form 3CEB.

Karvy Computershare pvt. Ltd vs ACIT-TS-670-ITAT-2017(HYD)-TP-ITA No. 737, 738, 739 and 740/HYD/2016 dated 07.07.2017

239. Relying on the decision in assessee's own case for AY 2007-08 wherein the Court had dismissed the Revenue's appeal against the Tribunal order deleting penalty levied u/s 271(1)(c), the Court upheld Tribunal's order deleting penalty in respect of the impugned year as well and held that penalty u/s 271(1)(c) was not to be levied merely because the assessee accepted the addition under quantum proceedings.
Pr.CIT vs Gap International Sourcing (India) Pvt. Ltd-TS-677-HC-2017(DEL)-TP- ITA No. 692/2017 dated 31.07.2017

Stay

240. The Court, following co-ordinate bench's ruling in assessee's own case dismissed Revenue's appeal challenging power of Tribunal to extend interim order of stay beyond 365 days and held that where the delay in disposing appeal was not attributable to the assessee, Tribunal had the power to grant extension of stay beyond 365 days in deserving cases.
Pr. CIT vs. Pepsi Foods Pvt. Ltd- [TS-558-HC-2017(DEL)-TP]- ITA 363/2017 and 364/2017 dated 03.07.2017
241. The Tribunal, noting that the TP-adjustment arose as the TPO had rejected the transaction by transaction approach followed by assessee and adopted aggregation approach without giving due regard to the fact that the activities undertaken by the assessee were two separate activities which were not closely inter-linked/inter-connected to each other and profitability of each activity had been determined separately by the assessee, granted stay of outstanding demand of Rs. 47.34 lakhs for a period of 6 months or till disposal of appeal, whichever was earlier subject to payment of Rs. 10 lakhs on or before 31st march 2017.
RTA Alesa AG vs DCIT-TS-561-ITAT-2017(DEL)-TP-ITA No. 1659/del/2017 dated 24.03.2017
242. The Tribunal, noting that the assessee had paid Rs. 8 Lakhs out of the total demand of 33.57 lakhs, granted stay of demand to the assessee for a period of 6 months or till disposal of appeal, whichever is earlier subject to payment of Rs. 9 lakhs on or before 2nd June 2017 for AY 2012-13. The demand arose due to TP-adjustment of Rs. 66.16 lakhs made in the case of the assessee (engaged in the business of contract development and technology support for pharmaceutical companies). The Tribunal opined that taking into account the merits of the case, the financial position of the assessee and the balance of convenience, it was a fit case for grant of stay on recovery of demand subject to the condition that a further sum of Rs.9,00,000/- on or before 2/6/2017 was paid by the assessee.
Indegene Pvt Ltd vs ACIT-TS-506-ITAT-2017(bang)-TP- IT(TP)A No.5911Bang/2017) dated 26.05.2017
243. The Tribunal noting that the appeal had already been heard and order was awaited, granted further stay of demand to the assessee for AY 2010-11 till July 21, 2017 or till disposal of appeal whichever was earlier. The DR of Revenue had opposed the extension of stay but could not point out any reason or basis to reject the request of the assessee and therefore the assessee was granted extension of stay of demand.
Manipal Global Education Services Private Limited vs DCIT- [TS-536-ITAT-2017(Bang)-TP]- IT(TP)A No.236/bang/15 dated 09.06.2017
244. The Tribunal, noting that the assessee had duly paid Rs. 2 crores fulfilling conditions imposed under earlier stay order, granted extension of stay of outstanding demand of Rs 16.84cr to assessee for AY 2012-13 for a period of 90 days or till disposal of the appeal whichever was earlier, subject to the condition that the assessee would not seek adjournment without justifiable reasons.

Epson India Private Limited vs ACIT- [TS-549-ITAT-2017(Bang)-TP]- S.P. No.105/Bang/2017 dated 02.06.2017

245. The Court, noting that Tribunal had directed the assessee to deposit 50% of the demand (20% within 7 days of its order and balance within 180 days in 6 monthly installments) out of which assessee had already discharged 20% of the demand, restricted partial payment of outstanding demand to 30% instead of 50% as directed by Tribunal vide an interlocutory stay order. Since 20% of the tax demand was already deposited, the Court directed assessee to deposit the remaining 10% within one month. Considering that main appeal was pending before Tribunal for last one year along with the connected appeals filed earlier, HC directed the Tribunal to decide the pending appeals expeditiously, preferably within 6 months from date of the present order.

Google India Pvt ltd vs ACIT/DIT-TS-594-HC-2017(Kar)-TP-Writ petition no. 13601/2017 (T-IT) dated 17.07.2017

246. The Court, admitted Revenue's SLP challenging Punjab & Haryana High Court up-holding Tribunal's stay extension beyond 365 days. The High Court had relied upon co-ordinate bench ruling in assessee's own case for AY 2009-10 which had upheld Tribunal's power to grant stay beyond 365 days.

Pr.CIT vs Carrier Air Conditioning and Refrigeration Ltd-TS-611-SC-2017-TP-18885/2017 dated 31.07.2017

247. Where the assessee itself submitted that the stay petition is not pressed as the appeal was scheduled for final hearing in 2 weeks time, the Tribunal dismissed the application.

Geodesic Yongnam Structural Pvt Ltd vs DCIT-TS-653-ITAT-2017(Bang)-TP-ITA no 140/bang/2017 dated 11.08.2017

248. Noting that the delay in complete disposal of appeal was not attributable to the assessee, the Tribunal extended stay beyond 365 days. It noted that the Tribunal had passed an interim order rejecting the technical aspect that the claim of the assessee that the assessment order was time barred and that the hearing of the appeal and decision on merit had been adjourned.

The Himalaya Drug Company vs ACIT-TS-656-ITAT-2017(Bang)-TP-S.P. No. 142/bang/17 dated 11.08.2017

249. The Tribunal, granted stay of outstanding demand of Rs. 92.05 crores for AY 2013-14 for a period of 3 months or till disposal of appeal whichever was earlier, subject to payment of 25% of the disputed outstanding demand and directed assessee to make payment of 10% on or before August 14, 2017 and remaining 15% on or before August 24, 2017. It accepted assessee's submission that it had a good prima facie case and in view of its financial condition it could make a payment of maximum 25% of the disputed demand in 2 instalments subject to which stay was granted for the balance demand.

The Himalaya Drug Company vs ACIT-TS-657-ITAT-2017(Bang)-TP-ITA no. 114/bang/2017 [IT(TP)A no. 1385/bang/17] dated 11.08.2017

250. Relying on the decision in the case of Pepsi Foods P. Ltd [TS-281-HC-2015(DEL)], wherein it was held that the Tribunal had the power to grant extension of stay beyond 365 days, the Tribunal granted further extension of stay of demand for a period of 6 months or till disposal of appeal, whichever was earlier, subject to the condition that no adjournment would be taken without any valid reason.

Vodafone Mobile Services Ltd vs DCIT-TS-578-ITAT-2017(Bang)-TP-IT(TP)A no. 1160 & 1162/bang/2015 [stay petition no. 261 & 262/bang/2016 dated 28.06.2017

251. The Tribunal, noting that the demand arose due to TP-adjustment in respect of payments made for advisory & managerial services to AE and similar adjustment was made in preceding AYs 2009-10 and 2010-11 which were pending before Tribunal for adjudication, granted stay of outstanding demand for a period of 180 days or till disposal of appeal whichever was earlier, subject to payment of Rs. 10 lakhs for each AY by September 30, 2017. Further it directed assessee to furnish proof of demand deposit within 10 days for such deposit and fixed hearing for December 18, 2017

Emerson Climate Technologies (India) Pvt. Ltd vs. DCIT-TS-742-ITAT-2017(PUN)-TP- ITA Nos. 359 & 2847/PUN/2016 dated 15.09.2017

252. The Tribunal noted that the demand arose due to TP-adjustment in respect of assessee's payment of royalty/technical know-how to AE whereas the royalty paid for preceding AYs 2010-11 and 2011-12 as per the same rate (5% on local sales and 8% on value of export sales net of Indian taxes) was accepted by AO/TPO. Accordingly, it granted stay of outstanding demand for a period of 6 months or till appeal disposal, whichever was earlier subject to payment of Rs 1 crore on or before October 15, 2017.

Firmenich Aromatics (India) Private Limited vs DCIT-TS-764-2017(Mum)-TP - SA No.280/Mum/2017 dated 25.09.2017

Others

253. The Tribunal, set aside the order of the TPO/DRP making an adjustment solely on account of alleged location savings and dismissed the TPO's contention that conducting a trial in India led to location savings in the hands of the assessee as the regulations, compliance and investigating costs were lower. Noting that the TPO's quantification of location savings was merely based on web article and not actual costs, it further held that location savings were only relevant in the cross-border transaction for the limited purpose of examining and investigating a transaction and not as a basis for determining the ALP and consequent adjustment. It also held that so far as the transactions were not entered into solely for the purpose of avoiding tax, addition on account of location savings was not sustainable. The Tribunal further clarified that even the concept of BEPS is relevant only for transaction solely focused on tax evasion.

Parexel International Clinical Research Pvt. Ltd (Earlier known as Parexel International Synchron Pvt. Ltd) vs. DCIT-TS-580-ITAT-2017(Bang)-TP-ITA No. 254/bang/2016 and 292/bang/2016 dated 16.06.2017

254. The Tribunal admitted assessee's additional ground for AY 2007-08 seeking consideration of overseas AE as a 'tested party' and remitted the matter to the file of AO/TPO for fresh enquiry and determination as complete details were not available on record but were filed as additional evidence. Referring to the definition of 'tested party' under OECD TP guidelines in absence of corresponding definition in domestic law, it directed the AO / TPO to consider the following relevant factors while determining whether the foreign entity could be considered as a tested party viz. (a) whether it was the least complex entity (b) whether reliable and accurate data for comparability was available and (c) whether the data available could be used with minimal adjustment.

Nivea India Private Ltd vs DCIT-TS-668-ITAT-2017(mum)-TP-ITA no. 121/mum/2013 dated 21.08.2017

255. Where the assessee had charged its AE for provision of network services on a provisional basis and subsequently reduced the fee charged by way of a credit note and the AO rejected the credit notes on the ground that they were issued to reduce / suppress taxable income, the Tribunal, noting that the AE's ledger accounts had included the credit note in its books for working out the final fees, restored the matter to the file of the AO for fresh adjudication.

Reach Network India Pvt Ltd – TS-664-ITAT-2017 (Mum) – TP-ITA no. 5632/mum/2013 dated 05.07.2017

256. Since there was a discrepancy in the turnover reflected in the assessee's Transfer Pricing study (Rs.3.97 crore) and value of international transaction in the additional ground of appeal filed by the assessee (Rs. 6.13 crore), the Tribunal remitted the matter to the AO / TPO for re-consideration noting the assessee's submission that a fresh Transfer Pricing study had to be conducted due to the aforesaid error.

Gameloft Software Pvt Ltd – TS-660-ITAT-2017 (Hyd) – TP – ITA No 25 / Hyd / 2012 dated 09.08.2017

257. The Tribunal, noting that assessee had entered into an arrangement with **its** AE for provision of network support services as per which amount receivable from AE was determined as per formulae viz. (Return on costs + return on assets) – (External customer Revenue + ISP Revenue + other income) and the assessee had originally raised invoices of Rs. 15.76 cr on AE on provisional basis which was subsequently followed by credit note of Rs 2.49 cr as assessee estimated that income receivable as per the agreement would be less than invoices raised, held that the aforesaid facts were not analyzed properly by the AO/FAA during assessment/appellate proceedings and accordingly, restored the matter to the file of AO for fresh adjudication.
Reach Network India Private Ltd vs. ITO-TS-664-ITAT-2017(Mum)-TP-ITA No. 5632/mum/2013 dated 05.07.2017

11. International Tax

a. **Permanent Establishment**

258. The Court dismissed the appeal of the Revenue and held that merely keeping books of accounts, apportioning a portion of telephone expenses to the assessee's LO or having a common manager for its LO and Project Office (PO) was not sufficient to conclude that the assessee's LO was being used to carry on the business and therefore, held that the LO did not constitute a PE in India. It also noted that the RBI had accepted the functioning of the assessee's LO for over three decades and that the assessee was adhering to the conditions imposed by RBI, one of which was to not carry any business or trading activity in the LO.
Mitsui & Co. Ltd. TS-310-HC-2017(DEL) (ITA 13/2005 dated July 27, 2017)

259. The Tribunal held that the assessee's Indian group entity viz., SIPL, engaged in procuring business from Indian advertisers for a commission of 15% of business receipts did not constitute a dependent agent PE under Article 5(6) of India-Netherlands DTAA as SIPL i) was acting in the ordinary course of business ii) undertook agency activities for other entities as well and iii) was not authorized to enter into any agreement with any client independently. It also observed that as per CBDT Circular No. 742 the rate of commission of 15% payable to Indian agents was as per industry norms and at ALP and therefore, no further attribution of profits could have been made in the hands of the assessee.
International Global Networks BV TS-340-ITAT-2017(Mum) (ITA No. 5689 to 5695/Mum/2014 dated July 26, 2017)

260. The assessee, engaged in supplying telecom equipment was a US based subsidiary company of Nortel Networks, Canada and had an indirect subsidiary company in India viz. Nortel Networks India. Nortel Networks, Canada also had a Liaison office in India. Since Reliance, India required an Indian company to bid for its contract of supply of optical hardware and provision of related installation and commissioning services, Nortel India entered into the said contract and assigned all its rights under the optical hardware contract to the assessee retaining the services contract. The AO / CIT(A) alleging that the entire contract was a whole and that the installation and negotiation was done by Nortel India, held Nortel India and the LO as a fixed place of business, dependent agent PE, business connection, place of management, sale outlet, installation PE and Service PE under the India-US DTAA. The Tribunal relying on the order the Court in the assessee's own case held that mere existence of business connection without evidence of the attributable profits in India would not lead to taxability in the hands of the assessee and since the supply of equipment was done by the assessee outside India there was no income attributable on that account. Vis-à-vis the installation, commissioning and testing, the Tribunal held that the said services were provided by Nortel India on its own account and not on behalf of the assessee and therefore no installation or service PE existed. Further, it held that there was no evidence that the premises of LO or Nortel India were at the disposal of the assessee and therefore it could not constitute a fixed place PE as well. As regards dependent agent PE, it held that there was no evidence brought on record to prove that Nortel India

habitually concluded contracts on behalf of the assessee and accordingly held that no dependent agency PE existed as well. Accordingly, it held that the assessee was not taxable in India.

Nortel Networks India International Inc v ADDIT – (2017) 51 CCH 0129 Del Trib – ITA No 3313 to 3315 / Del / 2012

b. ***Royalty / Fees for technical services***

261. The Tribunal deleted the disallowance made by the AO u/s 40(a)(i) for AY 2003-04 for delay in depositing TDS u/s. 195 on payment made by the assessee (an Indian company) to German and UK entities for professional and corporate maintenance charges applying relief under non-discrimination article under respective DTAA's, since similar payments to residents did not attract the disallowance in the event of non-deduction of TDS prior to amendment made by FA 2004. With respect to server maintenance charges paid for accessing server belonging to German parent and usage of intranet, internet, mail data back-up etc., the Tribunal relying on Bharti Cellular [TS-6095-HC-2008(DELHI)-O] held that TDS u/s. 195 was not applicable as the payment did not amount to FTS in absence of human involvement and was in the nature of reimbursement of expenses. With respect to payment of testing and development charges paid to entity in Italy for the services rendered in Italy, the Tribunal held that payment constituted FTS having regard to 'human intervention since the activity of testing, operating of the machine was a specialized activity which only a technical person could do. However, since the services were rendered outside India and utilized in India, it held that explanation to section 9(2) was introduced by Finance Act 2007 w.e.f.1976 and as on the date of assessment there was no provision to tax the FTS rendered outside India and therefore, no tax was deductible u/s 195.

Cooper Standard Automotive India Pvt. Ltd TS-311-ITAT-2017(CHNY] (ITA No.785/Mds/2014 dated April 12, 2017)

262. The Tribunal held that payment received by the assessee (US software company) for rendering implementation, consultancy and maintenance services in connection with 'customized' software licensed to Indian customers, amounted to Fees for Includes Services ('FIS') under Article 12(4)(a) of India-US DTAA (which provides that FIS includes payments for the rendering of any technical or consultancy services if such services are ancillary and subsidiary to the application or enjoyment of the right, property or information for which a payment described in paragraph 3 (i.e. 'royalties') is received). It rejected the assessee's stand that since no knowledge was made available to the Indian customers, the amount could not have been taxed as FIS u/s 12(4)(b) and held that for article 12(4) the fee for included services may fall in clause (a) or clause (b) and compliance of both clauses wasn't necessary. Further, relying on the Karnataka High Court ruling in the case of Samsung Electronics Ltd, it held that payment from software supply amounted to royalty. On going through the technical services contract it noted that the services provided by the assessee were for the effective use of the customized software licensed to Indian customers. Accordingly, it held that the contract was for rendering services complimentary and supplementary to the licence which would be taxable as per Article 12(4)(a).

i2 Technologies US Inc. [TS-263-ITAT-2017]

263. The Tribunal held that consideration received by the assessee (a UAE based group company) from ABB Ltd. (assessee's Indian counterpart) pursuant to rendering technical services, constituted 'royalty' under Article 12 of India-UAE DTAA. It rejected assessee's argument that the amount was not taxable in India as neither did the DTAA have a specific FTS article nor was Article 22 ('other income') applicable as assessee did not have a PE in India. It observed that the service agreement gave opportunity to ABB Ltd of using the information pertaining to industrial /commercial / scientific experience belonging to the assessee which would fall within the ambit of 'royalty' definition under Article 12(3) of India-UAE DTAA. It further held that furnishing of consultancy services by the assessee through its employees would fall within the ambit of service PE under Article 5(2)(i) of India-UAE DTAA. It rejected assessee's stand that since the employees remained in India only for 25 days, service PE clause was not triggered and held that in the present age of technology where the services, information, consultancy, etc., could be provided with various virtual modes, services could be rendered even without the physical presence of employees of the assessee. It further held that for

triggering PE, services or activities should have been rendered for more than 9 months and stay of the employees was not required for more than 9 months. It also rejected the assessee's reliance on co-ordinate bench ruling in assessee's own case for AY 2012-13 wherein it was held that FTS was not taxable in India in absence of assessee's PE in India since there was no examination by coordinate bench with regard to the nature of activities of assessee as to under which clause of DTAA such activities would fall.

ABB FZ-LLC [TS-256-ITAT-2017(Bang)]

264. The Tribunal held that the payment made by the assessee to the non-resident company (in Singapore) to access a publicly available database could not be taxed as royalty as neither did the assessee receive any knowledge as to how the databases were maintained nor did it receive any license for commercial exploitation of the copyright with regard to the database maintained by the payee. It held that the assessee had merely got a limited right to use the information solely belonging to the payee which amounted to use of 'copyrighted information' which could not be taxed as royalty under Article 12 of India-Singapore DTAA since there was no transfer of all or any rights in respect of copyright of literary work.

Kinsey Knowledge Centre India Pvt. Ltd. [TS-288-ITAT-2017(DEL)]

265. The Tribunal held that the consultancy fees received by the assessee (a Netherlands based entity) from ZPMC (a Chinese entity) pursuant to the supply of cranes to assessee's Indian group entity under the terms of Main Purchase Agreement ('MPA') @ USD 15,000 / 50,000 per crane supplied would not be taxable in India. Noting that the services were rendered by assessee outside India i.e. China to a non-resident i.e. ZPMC and the same were utilized in manufacturing the cranes outside India i.e. in China, it held that the amount would not be deemed to accrue or arise in India as per section 5 read with section 9 and hence would not be taxable in India. Further, it held that Article 12 of DTAA between India and Netherlands would be applicable only if the services rendered were in the nature of information concerning technical/industrial/commercial knowledge or experience or skill. Accordingly, it concluded that, consultancy fees received by the assessee from ZPMC were not FTS and therefore not chargeable in India. Further, it held that since the actual receipt of fees was in the subsequent AY, it could not be taxed in the impugned year.

APM Terminal Management B.V vs DCIT-TS-386-ITAT-2017(Mum)-ITA No. 3621/mum/2015 dated 06.09.2017

c. **Capital Gains**

266. Rejecting the allegation of the Revenue that the assessee (a Mauritius company) was a mere shell company having no business/commercial substance and not eligible to the benefits of Article 13 of the India-Mauritius DTAA, the Court observed that it was holding a Category 1 Global Business License issued by Financial Services Authority of Mauritius, valid TRC and held shares of TIL for 13 years which proved that the assessee was not a shell company. Accordingly, it held that the assessee was eligible to treaty benefits and therefore the capital gains arising to it in respect of transfer of shares of Tata Industries Limited ('TIL') to Tata Sons Limited ('TSL') was not taxable in India in view of Article 13 of India-Mauritius DTAA.

JSH (Mauritius) Ltd. TS-308-HC-2017(BOM) (W.P. No. 3070 of 2016 dated July 28, 2017)

d. **Withholding tax**

267. The Tribunal held that non-resident commission agents based outside India rendering services of procuring orders cannot be said to have a business connection in India and therefore commission payments to them cannot be said to have been either accrued or arisen in India. It dismissed the contention of the Revenue that the right to receive the commission arises in India when the order gets executed by the assessee and held that the assessee was not liable to deduction under section 195 of the I.T. Act on account of foreign agency commission paid outside India for promotion of export

sales outside India. Accordingly, it deleted the disallowance made by the AO under Section 40(a)(i) of the Act.

Divya Creation v ACIT - ITA No.5603/Del/2014 dated 14.09.2017

268. The Court confirmed the Tribunal's order and held that commission paid by assessee (engaged in garments exports) to an Indian agent on behalf of the foreign entity was taxable in India and accordingly disallowed it under section 40(a)(i) as requisite withholding tax had not been deducted. Noting that concurrent orders of the lower authorities confirmed the position that commission had actually been received in India, the Court held that Circular No. 786 of 2000 (wherein it was clarified that commission remitted directly to foreign agent abroad was not taxable in India) was not applicable. ***Smt. Fathima Harris vs. ITO-TS-390- HC-2017(MAD)- -T.C. (Appeal) no 121 of 2009- dated 27.04.2017***

e. ***Others***

269. The Court upheld the order of the Tribunal wherein it was held that forex gain arising to the assessee (Indian company) on receipt of royalty/interest income (which was exempt under India-Malaysia treaty) from Malaysian JV company was taxable in India notwithstanding the fact that the royalty/interest income was not taxable. It held that the gain on account of foreign exchange variation could not be attributable to royalty and interest earned in Malaysia, but was a benefit/income arising from subsequent transaction i.e. difference in exchange rate at the time of remittance of royalty/interest income from Malaysia.

Ballarpur Industries Ltd. TS-315-HC-2017(BOM) (ITA No. 11 of 2002 dated August 1, 2017)

270. The Court restrained Vodafone Group Plc. UK (defendant) from initiating parallel arbitration proceedings under India-UK Bilateral Investment Promotion and Protection Agreement ('BIPA'), while the arbitration under India-Netherlands BIPA was pending. The Court observed that pursuant to retrospective amendments to Sec. 9 where the tax liability was imposed on Vodafone International Holdings B.V ('VIHBV') in respect of acquisition of stake in Hutchinson Essar Limited ('HEL') for its failure to deduct TDS on capital, VIHBV, the subsidiary of defendant group, had invoked the arbitration clause under the India-Netherlands BIPA. The Court held that the reliefs sought by the defendant under the India-UK BIPA and by its subsidiary i.e. VIHBV under the India-Netherlands BIPA were virtually identical and since the defendant as well as its subsidiary VIHBV were part of the same corporate group, they could not file two independent arbitral proceedings as that would amount to abuse of process of law.

Vodafone Group PLC United Kingdom TS-344-HC-2017(DEL) (I.A.9461/2017 in CS(OS) 383/2017 dated August 22, 2017)

271. The Tribunal held that taxes withheld in USA (i.e Federal and State tax) in the case of the assessee individual would not be added back while computing income taxable in India. It rejected the Revenue's contention that since the assessee was ordinarily resident in India, by virtue of section 5(1)(c), the federal taxes and state income taxes withheld in the USA, was part of assessee's taxable salary income in India and held that for clause (c) of section 5(1), grossing up of income is not required and only net income after TDS is to be taxed in India. Noting that since the AO had determined the amount of credit of tax paid in USA after including the US tax amount as an income taxable in India, it aside the determination of tax credit under Article 25 to the file of AO for fresh decision with the direction that the tax withheld in US should not be added back to quantify the income taxable in India.

Sunil Shinde vs. ACIT [TS-377- ITAT 2149] dated 31.08.2017

272. The Court held that, salary of a non-resident seafarer for services rendered outside India on-board foreign ships accrues outside India and is not assessable in India even if received by the seafarer into the NRE bank account maintained in India by the seafarer

Sumana Bandyopadhyay vs DDIT- ITA No. ITAT 374 of 2016 dated 13.07.2017

I. Domestic Tax

a. Income

273. The Tribunal dismissed Revenue's appeal and held that where the Assessee had invested in share application money not immediately required for the purpose of its business in fixed deposits, the interest earned on such fixed deposits was rightly reduced from its Capital Work in Progress and was not taxable as IFOS as it was a capital receipt. The Tribunal distinguished the decision of SC in Tuticorin Alkali Chemicals (227 ITR 172) and followed the decision of Madras HC in VGR Foundations (298 ITR 132).

ITO vs. Alliance Hospitality Services Pvt. Ltd. (2017) 50 CCH 0257 Mum Trib (ITA No. 3191/Mum/2013 dated August 22, 2017)

274. Where the assessee had invested the compensation received by her from the Govt. on account of compulsory acquisition of land and had invested the same in the temporary fixed deposit, the Court dismissed the appeal of the assessee and held that the interest received was taxable as IFOS irrespective of the fact that the final determination of compensation was still pending as the right to receive the said income had accrued in the hands of the assessee under the mercantile system of accounting. It dismissed the assessee's contention that since enhanced compensation receivable by her was not yet finally determined by the Court, no income could accrue to her.

Premlata Purshottam Paldiwal TS-321-HC-2017(BOM) (ITA No. 17- 20 of 2011 dated August 1, 2017)

275. Where the assessee (an artist and film director) transferred its sole proprietary concern to Radaan Pvt Ltd (where she was a director and substantial shareholder) and received non-compete fees from the said company, the Court observed that though the exclusivity of engagement with the company was portrayed, the assessee continued to render services to the third parties subject to the consent of the company and payment of 5% of her receipts and accordingly, held that the non-compete fee was a colourable device/sham. Accordingly, it rejected the assessee's contention that non-compete fees received was capital in nature and held that the same was chargeable to tax.

R.Radikaa, Radaan Media Works India Ltd TS-339-HC-2017(MAD)(T. C.A.Nos.1365 of 2007 and 1175 of 2008 dated August 8, 2017)

276. The assessee was engaged in the business of turnkey plantation [i.e. to create and develop plantations for Western Coal fields Ltd (WCL)] whereby it sowed seeds and developed nurseries on its own land and then transplanted the grown plants in the areas identified by WCL post which it also maintained the plants for 2-3 years using its own men and material. The Court upheld the Tribunal's order wherein it held that the entire activity was divisible into two stages viz., 1. where the assessee sowed seeds and developed the plants on lands belonging to it and 2. where the trees/plants were transplanted on lands belonging to WCL and the assessee maintained the plants for 2-3 years using its own men and material. It held that only income arising from the 1st stage was exempt u/s 10(1) and income from Stage 2 was taxable. However, since there was no bifurcation between first and second stage, it held that the gross income earned after reducing the entire amount expended at stage 1 was taxable.

The Forest Development Corporation of Maharashtra Limited TS-325-HC-2017(BOM)(ITA No. 77 of 2004 dated August 3, 2017)

277. The Court relying on its decision for the earlier year in the case of the assessee held that maintenance charges received by the assessee was to be treated as its income and rejected the assessee's contention that the maintenance charges received was not its income since the amount was received in trust for specific performance on behalf of the members. Since the assessee had shown the amount of ground rent and maintenance charges together in the balance sheet, it restored the matter to the file of AO to determine the amount of maintenance charges.

Pr. CIT vs. Delhi State Industrial Infrastructure Development Corp. Ltd. (2017) 99 CCH 0187 DelHC (ITA No. 375/2015 dated August 17, 2017)

278. The Court held that amount received by assessee, running a manufacturing unit in a specified backward area, by way of exemption of sales tax payments under the UP state subsidy scheme was taxable as a revenue receipt. The Court noted that the assessee had the flexibility of using the amounts retained for any purpose, not necessarily capital. Further, the Court observed that under the UP State subsidy scheme, the assessee was allowed to retain the sales tax amounts collected from customers/service users, subject to the quantitative limit of 100% of capital expenditure and that the said quantitative limit indicated therein was only a reference point.

CIT vs. Bhushan Steels & Strips Ltd. (2017) 83 taxmann.com 204 (ITA No. 315 of 2003 & others dated July 13, 2017)

279. Where the assessee, engaged in the setting up of power projects required certain desired net-worth, pursuant to which the assessee's parent had stepped in and invested funds in assessee's shares, out of which certain amount was temporarily parked in FDs from which the assessee earned interest income, the Tribunal relying on the decisions of the Apex Court in Challapalli Sugar Mills (citation) and Bokaro (citation), held that such interest earned by assessee being integrally and inextricably linked with setting up of power project, was a capital receipt which was to be set-off against pre-operative expenditure and was not taxable as income from other sources. It distinguished Revenue's reliance on the Apex Court ruling in Tuticorin Alkali Chemicals & Fertilizers Ltd. observing that in that case, the surplus funds available out of borrowed funds was invested in fixed deposit during the pre-construction period whereas in the assessee's case the fund invested in fixed deposits was inextricably linked to setting up the power project.

Solarfield Energy Two Pvt Ltd vs ITO-TS-409-ITAT-2017(mum)- ITA no. 5076/mum/2016 dated 11.09.2017

280. The Court allowed assessee's (a general insurance company) claim for exemption in respect of profit on the sale of investments applying CBDT circular 528 of 1988 (which provided that profit and loss on sale of investments would not be taken into account in calculation of insurance profits) for AY 2005-06 and rejected Revenue's stand that Circular No. 528 was not applicable to assessee and that no exemption can be claimed as assessee's entire income was to be treated as business income in terms of Sec. 44 (insurance specific). The Court held that since the CBDT circular which was beneficial to the Assessee had not been withdrawn, it was binding on the Revenue authorities. Further, the Court observed that what an insurance company was deprived of by omission of Rule 5(b) (which provided adjustments to balance of profits disclosed in annual accounts) was provided to it by the Circular. Accordingly, it held that for the period during which there was no Rule 5(b) (like in case of subject AY) the profits on sale of investments were not taxable in the hands of general insurance companies.

CIT vs. Oriental Insurance Co. Ltd. TS-361-HC-2017 (ITA No. 372/2015 dated August 30, 2017)

281. The Court held that unutilized Cenvat credit could not be added to closing stock of the assessee where the assessee was following exclusive method of accounting (i.e. recording the purchases exclusive of excise duty) since no income was generated to the extent of Cenvat credit.

CIT vs. DIAMOND DYE CHEM LTD. (2017) 99 CCH 0138 MumHC ITA No. 146 of 2015 dated 07/07/2017

b. Business Income

282. The assessee was engaged in the business of acquiring properties on ownership or lease or rental basis and then giving it on lease along with various amenities such as electricity, cooling towers, elevators, car parking for the lessees/visitors which were inseparable and from which it earned rental income. The Court upheld the order of CIT(A) and the Tribunal holding that the rental income earned by the assessee was business income considering that the object (as per MoA) and the basic intention of the Assessee was commercial exploitation of its properties by developing them as shopping malls/business centers.

PR. CIT vs. Stellar Developers Pvt. Ltd. (2017) 99 CCH 0196 Mum HC (ITA NO. 690, 691, 692, 698, 699 & 919 OF 2015 dated August 2, 2017)

283. The Court noting that the assessee, a joint venture between two companies was formed merely for the purposes of submission of tender for the construction of railway tunnels and that i) the contract obtained thereon was executed by the JV members and not the assessee and ii) the income received from the contract was allocated to the JV partners (in the ratio of 97:3), allowed the assessee's appeal. Relying on the decision of the Apex Court in *Sitaldas Tirathdas*, it held that the railway contract receipts was not income of assessee, but was a diversion of income by overriding title. Accordingly, it held that no income accrued to assessee. Separately, it held that the amendment to Section 40(a)(ia) vide Finance Act, 2012 inserting proviso to Sec. 40(a)(ia) [which states that once tax is paid by payee, deductor cannot be treated as assessee-in-default] was retrospective in nature and therefore the amount allocated / distributed by the assessee to JV partners could not be disallowed u/s. 40(a)(ia).

Soma TRG Joint Venture [TS-405-HC-2017(J & K)] ITA No.34/2013 c/w ITA No.18/2010 ITA No.19/2010 ITA No.52/2013 dated 15.09.2017

284. The assessee made distress sale of plot of land (which was shown as stock-in-trade in its balance sheet) below the market value. The AO rejected the assessee's stand that the property in question which was sold had been held by it as 'stock in trade'. The AO observed that the assessee had sold plot at the same price at which it was purchased even when the market value of the property was higher. Accordingly, he concluded that the assessee had shown its assets as 'stock in trade' in order to avoid Section 50C of the Act and he treated the plot of land as investment of the assessee and made addition applying Section 50C to arrive at a net short term capital gain. The Court observed that the assessee had failed to place relevant and satisfactory materials before the authorities in support of its claim that the property should have been treated as its stock in trade and not as an investment and mere inclusion of the property as 'stock in trade' in its accounts would not relieve the assessee from satisfying the Income Tax Authorities of the genuineness of the sale of the property. Accordingly, it upheld the order of the AO.

SARAS METALS PVT. LTD. vs. CIT & ANR. (2017) 99 CCH 0087 DelHC ITA 251/2016 dated 04/07/2017

c. Deductions/ Disallowances

Depreciation

285. The Court dismissed the appeal of the Revenue and held that the activity of mining for the purpose of production of mineral ore fell within the ambit of the word "production" entitling the Assessee (engaged in mining, mineral processing for exports and shipping) to the benefit of additional depreciation u/s 32(ii)(a) (in case of new machinery or plant acquired and installed by an Assessee engaged in the business of manufacture or production of an article or a thing) on equipment, P&M used in the extraction and processing of ore.

Pr. CIT vs. SESA Resources Ltd. (2017) 99 CCH 0203 Mum HC (Tax Appeal No. 57/2016 dated August 16, 2017)

286. The Tribunal held that the amount received by the assessee from US Agency for International Development (USAID) was not to be reduced while determining the WDV for the purpose of computing depreciation as USAID was not Central Government/State Government or any person or authority established under any law in India, in terms of Explanation 10 to Section 43(1). It further noted that the grant received by the assessee was conditional and repayable and was thus financial arrangement and not a subsidy grant and also held that even if the grant was treated as a subsidy, since it was not for a specific plant & machinery, such payment/grant would not fall within the expression 'met directly or indirectly' for the asset in terms of Explanation 10 to Sec 43(1).

Spectrum Coal & Power Ltd TS-341-ITAT-2017(Mum)(ITA No 1295/MUM/2012 dated August 3, 2017)

287. The Tribunal, relying on the decision in the case of *DCIT vs ABC Paper Ltd* [ITA No.2263 / del / 2012] held that the definition of intangible assets u/s 32(1)(iii) was inclusive which included not only know-

how, patents and copyrights, trademarks, licenses, franchises but also other business or commercial rights of similar nature which included 'brand' and accordingly the assessee was entitled to depreciation on paper brand.

DCIT vs Kauntum Paper Ltd – (2017) 51 CCH 0003 Delhi Trib. ITA No 1339 TO 1346/DEL/2017 dated 01.09.2017

288. Where the Assessee, engaged in the business of loading and unloading of cargo, had erected a Jetty/loading platform to execute its business contract, which was tenure based, the Court noting that it was a temporary erection held that 100% depreciation should be allowed to the Assessee. The Court stated that on completion of the contract assessee was required to dismantle it. The Court further held that merely because Jetty had other contraptions attached to it such as conveyor belt for the process of loading it could not be considered a plant and eligible for only 25% depreciation.

CIT vs. M/s Anand Transport TS-282-HC-2017 (Tax Case (Appeal) No. 82/2017 dated March 7, 2017)

289. The assessee engaged in the business of trading in securities and shares suffered a loss on account of sale of mutual funds held as stock in trade. The Tribunal, observing that the only income earned by the assessee was interest on securities, upheld the assessee's treatment if the impugned loss as business loss eligible for set off against interest income earned as against AO's treatment of such loss as a capital loss. Further, it noted that in the earlier and subsequent years, the AO had accepted the treadopted by the assessee. Accordingly, the assessee's appeal was allowed.

Cosmos International Ltd vs. Income Tax Officer [I.T.A. No. 6059 (2017) 51 CCH 0015 DelTrib]

Section 35 (2AB)

290. The Court allowed the assessee's writ and granted deduction with respect to the capital expenditure incurred by it during AY 2011-12 u/s 35(2ab) on its R&D unit at Rohtak despite the fact that the approval of the Rohtak facility u/s 35(2AB) was received from the prescribed authority u/s 35(2AB) (viz., the Dept of Scientific and Industrial Research) only in 2014. Keeping in mind the object of Section 35(2AB) [i.e. to encourage the establishment of R&D facilities in the country and also to encourage innovation and investment on innovation] and noting that the delay occurred due to an inadvertent error in the application, the Court held that for availing the benefit u/s 35(2AB) what is relevant is not the date of recognition or the cutoff date mentioned in the certificate of the DSIR or even the date of approval but the existence of the recognition. Further observing that the assessee had been candid with the DSIR about its expenses and had given the break-up of the expenditure incurred thereupon along with the Auditor's certificate required for the same, it allowed the deduction to the assessee.

Maruti Suzuki India Ltd. [TS-320-HC-2017(DEL)] W.P. (C) 9306/2015 dated 04/08/2017

Section 35AC

291. The Court dismissed the appeal of the assessee and held that sub-section (7) to section 35AC withdrawing exception/deduction of expenditure incurred by way of contribution to approved institutions for carrying out eligible project or the scheme or payment made directly on such eligible project or scheme was valid. It held that though the section was introduced for promoting social and economic welfare and upliftment of the public, it was always open for the parliament to withdraw the deduction by framing necessary legislation if the parliament was of the view that such benefit should no longer be granted. It further noted that it was possible that some of the institutions, projects or schemes under the said system may be adversely affected but that itself could not be a ground for annulling the statutory provision.

Prashanti Medical Services & Research Foundation vs UOI [2017] 85 taxmann.com 266 (Gujarat) SCP No. 7558 of 2017 dated 14.09.2017

Section 36

292. Where the Department denied the Assessee deduction of contribution made by it towards LIC Group Gratuity Scheme u/s 36(1)(v) on the ground that the Assessee's application seeking approval for the Gratuity scheme was not granted, the Tribunal noting that the Assessee had filed application seeking approval for the Scheme with the Department way back in 1992 (which was approved by the Department only in 2015) held that the Assessee could not be made to suffer for the inaction of a Revenue official. It also noted that no disallowance with regard to the same was made in any of the previous years and, therefore, deleted the disallowance.
Rajasthan Co-operative Dairy Federation Ltd. vs. ACIT (2017) 50 CCH 0235 Jai. Trib. (ITA No. 352/JP/2017 dated August 10, 2017)

293. The assessee was engaged in the business of long term housing finance and had claimed deduction u/s 36(1)(viii). The AO observed that the assessee had claimed deduction in respect of interest on certain loan accounts which were transferred to HDFC for which it remained collecting agent and retained part of the interest received by HDFC in respect of which it had claimed deduction. However, the AO rejected the contention of the assessee and disallowed the deduction. The CIT(A) and the Tribunal upheld the order of AO. The Court observed that the assessee had transferred all its rights and liabilities, profits, losses and risks in connection with the housing finance to HDFC and it merely continued to act as a receiving and paying agent for which it retained certain component of interest. Accordingly, it held that after such transfer of loans the assessee would cease to be engaged in the business of long term finance with respect to such loan accounts and the income arising out of such activity would therefore not be the assessee's income from the business of providing long term finance and therefore, the assessee was not justified in claiming deduction u/s 36(1)(viii).
GRUH FINANCE LTD. vs. DCIT (2017) 99 CCH 0120 GujHC TAX APPEAL NO. 383 of 2017 TO 389 of 2017 dated 18/07/2017

294. The Tribunal dismissed assessee's appeal and held that the effect of brought forward losses u/s. 72 had to be given prior to allowing deduction towards provision for bad and doubtful debts u/s 36(1)(vii)(c). Accordingly, it upheld the AO's invocation of Section 154 of the Act whereby deduction u/s 36(1)(vii)(c) was withdrawn by applying set-off provisions u/s. 72 before allowing the impugned deduction, thereby resulting into nil total income, leaving no scope for deduction. It noted that Sec.36(1)(vii)(c) uses the expression 'total income', and held that carried forward loss had to be deducted in order to arrive at the total income.
Industrial Investment Bank of India Ltd. vs. DCIT TS-265-ITAT-2017 (ITA No. 1416/Kol/2014 dated April 5, 2017)

295. Where the assessee, a partnership firm, advanced interest free loans to two of its related parties and was paying interest on its partners capital, the Tribunal held that the AO had rightly held that the interest expense claimed by the assessee were not allowable under Section 36(1)(iii) observing that the assessee did not provide the fund flow statement to show that it had sufficient interest free funds and that the interest free advances were not made out of borrowed funds. It dismissed the contention of the assessee that the advances were made out of its profits earned during the year noting that no evidence to that effect was brought on record.
Bombay Sales Corporation v JCIT – (2017) 51 CCH 0054 (Ahd Trib) – ITA No 2748 & 3224 / Ahd / 2014 dated 04.09.2017

Section 37

296. The Tribunal allowed the appeal of the Assessee and held that the AO erred in disallowing 25% of the total expenditure incurred towards running the hospital alleging that since the Assessee had engaged a specialist to run the hospital there was no need to incur the aforesaid expenditure more so since copies of agreement in respect of lease rents, management fee and also other expenditure were filed during the course of the assessment proceedings. It noted that the aforesaid expenditures were necessary for the purpose of running the hospital and the liability of the specialist did not extend to meeting the aforesaid expenditure.

Add. Director of Income tax vs. Flt. Lt. Ranjan Dhall Chaitrable Trust & Ors. (2017) 50 CCH 0262 Del Trib (ITA No. 3073/Del/2012 dated August 21, 2017)

297. The Court held that where the expenditure was incurred by assessee (in the business of mining iron by taking lands on lease from the SG) towards legal fee and other litigation charges to protect its business interests in relation to mining lease and not to acquire mining lease or to get rid of a defect in title, the same did not create any capital asset and expenditure was allowable as revenue expenditure. The Court noted that the the grant of the lease was challenged in writ petitions before the Court and the Assessee was made a respondent and in order to sustain the lease and protect its mining rights the Assessee had to incur legal fees and other allied expenditure.

DCIT vs. B. Kumara Gowda (2017) 83 taxmann.com 370 (Kar) (ITA No. 200003-4/2015 dated July 10, 2017)

298. The Tribunal held that where the assessee-builder paid a compounding fee to the municipal corporation to regularize its building plan and to obtain approval of the project, the said payment could not be disallowed under explanation 1 to section 37 since the assessee did not carry out any illegal business and the payment of compounding fees was not for office or prohibition under any law.

Keerthi Estates (P) Ltd vs DCIT-TS-387-ITAT-2017(HYD)-ITA No. 271 /hyd / 2016 dated 09.08.2017

299. The Court, held that where the assessee paid liquidated damages to its customers on account of failure in delivery of machinery/late completion of terms and conditions of orders/ execution of contract, the said payment could not be disallowed under section 37 of the act since it was incurred in the ordinary course of business and was not opposed to public policy. Accordingly, it held that since the expenditure was not incurred for any purpose which was an offence or which was prohibited by law the Tribunal was justified in granting a deduction in respect of such expenditure u/s 37(1).

Pr.CIT vs Mazda Ltd (2017) 100 CCH 0019 GujHC ITA no. 647 of 2017 and 949 OF 2013 DATED 12.09.2017

300. Relying on the decision of the High Court in the case of Graphite India Ltd [221 ITR 420] the Tribunal held that expenditure incurred for acquisition of new facility which was subsequently abandoned at the work-in- progress stage was wholly or exclusively for purpose of assessee's business and therefore allowable as deduction u/s 37(1). It further held that entries in books of accounts claiming only 1/5th of expenditure, could not prevent assessee claiming legitimate business loss or revenue expenditure as deduction in full while computing income from business.

Royal Calcutta Turf Club & Anr vs Deputy CIT [2017] 51 CCH 78 Kol Trib. ITA No. 231/Kol/2013, 204/Kol/2013

301. Where the assessee, engaged in the export business had entered in forward contracts to hedge itself from foreign exchanges losses and suffered a loss on account of cancellation of such forward contracts, the Tribunal dismissed the contention of the Revenue that the said losses were to be disallowed being speculative in nature and held that since the losses were incidental to the business of the assessee it would be a loss arising out of its business activity. Accordingly, it directed the AO to delete the disallowance of the impugned losses.

Essel Propack Ltd v ACIT – (2017) 50 CCH 0033 (Mum – Trib) – ITA No 4116 / Mum / 2013 dated 11.09.2017

302. AO made addition on consumption of spares to machinery holding by treating same as capital expenditure which was deleted by the CIT(A) who held that consumption of machinery spares was allowable as revenue expenditure as there was no creation of any new asset which was capable of working independently and that no enduring benefit had been derived by assessee by such expenditure. The Tribunal upheld the order of the CIT(A) allowing the said expenditure by holding

that where expenditure is incurred to preserve and to maintain an already existing asset then expenditure incurred by assessee are in nature of current repair allowable as revenue expenditure.

BANCO ALUMINIUM LTD. & ANR. vs. DEPUTY COMMISSIONER OF INCOME TAX & ANR - ITA No. 276/Ahd/2015, 282/Ahd/2015 dated 29.09.2017

303. The Tribunal allowed deduction on provision regarding year-end circuit accruals (i.e. infrastructure cost and last mile charges paid to other operators for provision of telecom connectivity services). Taking note of the assessee's accounting procedure under which the assessee accrued expenses incurred in relation to services rendered during the relevant year, it held that the provision was made on scientific basis and in compliance with accounting standards. Further, it held that Revenue's action of disallowing the claim of circuit accrual in the year of creation and allowing it in the next year when such reversals were made was nothing but timing difference. Accordingly, it held that provision should be allowed in the year of creation itself in view of the mercantile system of accounting.

AT& T Global Network Services (India) Pvt Ltd vs. DCIT-TS-407-ITAT-2017(DEL)-ITA No. 2538/Del/2014 dated 18.09.2017

304. The Court reversed order of the Tribunal and held that loss on account of embezzlement by employees was incidental to Assessee's banking business and should be allowed as deduction in the year under consideration in which embezzlement was discovered by Assessee and not in its detection in an earlier year as held by the AO. The Court on a conjoint reading of SC ruling in Associated Banking Corporation of India Ltd. 36 ITR 1 and CBDT Circular dated 24/11/1965 held that 'discovery' and 'detection' connote different meaning, 'discovery' implies that loss arises only when employer comes to know about it and realizes that the amount would not be recovered and not merely the date of acquiring knowledge about the embezzlement. The Court accepted Assessee's plea that the loss on account of embezzlement come to the knowledge of Assessee in earlier year but the exact amount was ascertained after investigation in a subsequent year i.e. the date of discovery.

J and K Bank Ltd. vs. ACIT TS-370-HC-2017 (ITA No. 17/2007 dated August 29, 2017

Section 43B

305. The Court upheld the Tribunal's order and deleted Sec. 43B addition with regards to unpaid VAT, not claimed as deduction in the books of accounts. The Court noted that while the VAT component collected was not paid before the return filing due-date u/s. 139(1), such VAT was also not charged to the Profit and Loss account and was accounted for separately in the Books of Accounts.

ACIT vs. M/s Ganapati Motors TS-254-HC-2017 (Tax Case (ITA) No. 30 of 2016 dated April 25, 2017)

Section 14A

306. The Court dismissed the appeal of the Revenue and held that no disallowance u/s 14A r.w. Rule 8D could be made in the absence of exempt income. It rejected the Revenue's reliance on CBDT Circular No. 5/2014 (which provides that Section 14A would apply even when exempt income was not earned in a particular AY) and held that the Circular could not override the provisions of Section 14A.

Pr CIT vs. IL & FS Energy Development Company Ltd. (2017) 99 CCH 0190 DelHC (ITA No. 520/2017 dated August 16, 2017)

307. The Tribunal taking note of the significant change and movement in the Assessee's portfolio upheld the disallowance under Rule 8D(2)(iii) by holding that decision of making fresh investment or selling the existing investments is taken at a very high level of management and therefore the plea of the assessee that it had not incurred any administrative expenditure for earning dividend income could not be accepted.

M/s Tavant Technologies India Pvt. Ltd. vs. DCIT TS-264-ITAT-2017 (ITA No. 292/Bang/2014 dated May 31, 2017)

308. Where the assessee had provided detailed reply/explanation so as to justify its stand for not disallowing any expenses u/s 14A but the AO without recording satisfaction with regard to the assessee's books

of accounts as to why the assessee's claim was to be rejected, proceeded to invoke rule 8D citing it to be mandatorily applied w.e.f 08-09 onwards, the Tribunal held that such recourse to Rule 8D was not justified. However, it held that a reasonable disallowance of admin and other expenses (Rs. 2.50 lakhs) would be made attributing it to the exempt income and earned (Rs. 4.50 cr)

Bombay Real Estate Development Co. Pvt. Ltd. vs. Assistant Commissioner of Income Tax [I.T.A. No.6561(2017) 51 CCH 0018 MumTrib]

309. The Court deleted the disallowance u/s 14A by holding that in order to disallow this expense the AO had to first record, on examining the accounts, that he was not satisfied with the correctness of the assessee's claim of Rs. 3 lakhs being the administrative expenses. This was mandatorily necessitated by section 14A(2) of the Act read with Rule 8D(1)(a) of the Rules. Since there was a failure by the AO to comply with the mandatory requirement of section 14A(2) of the Act read with rule 8D(1)(a) of the Rules and record his satisfaction as required thereunder, the question of applying rule 8D(2)(iii) of the rules did not arise.

H.T Media Limited vs Pr.CIT published on 18.008.2017

310. Where the assessee earned dividend income on investments made in foreign companies and offered it to tax under the head income from other sources, the Tribunal held that no disallowances of expenses under Section 14A could be made as the impugned income had already suffered tax. Further, since the investments in domestic companies did not yield any income during the year, the Tribunal, relying on the decision of the High Court in Cheminvest v CIT 378 ITR 33 (Del) held that no disallowance could be made under Section 14A in respect of the said investments.

Essel Propack Ltd v ACIT – (2017) 50 CCH 0033 (Mum – Trib) – ITA No 4116 / Mum / 2013 dated 11.09.2017

311. Where the assessee claimed that he had not incurred any expenditure to earn exempt income but the AO, without examining the claim of the assessee, invoked Section 14A read with Rule 8D presuming that the assessee had incurred expenditure, the Tribunal, relying on the decision of the Court in Maxopp Investment v CIT 203 Taxman 364 (Del) held that Section 14A could be invoked only where actual expenditure had been incurred towards earning exempt income. Accordingly, it directed the AO to delete the addition made as it was on the basis of mere presumption.

Justice Mohan Lal Verma v ACIT – (2017) 51 CCH 0049 (Del Trib) – ITA No 6067 / Del / 2015 dated 13.09.2017

312. The Tribunal held that where assessee had not earned any dividend income forming part of total income during year under assessment, section 14A read with Rule 8D was not attracted.

ASSISTANT COMMISSIONER OF INCOME TAX vs.FEEDBACK INFRA PVT. LTD. - (2017) 51 CCH 0069 DelTrib - ITA No.5980/Del./2015 dated 18.09.2017

313. The Tribunal, relying on the decision of the Court in Cheminvest vs CIT (2015) 378 ITR 33 (DEL) held that no disallowance u/s 14A could be made in the absence of any exempt income.

Cosmos International Ltd vs. Income Tax Officer [I.T.A. No. 6059 (2017) 51 CCH 0015 DelTrib]

Chapter VIA / Section 10A / 10B

314. The Court allowed the assessee deduction under Section 80HHE (which provides for deduction in respect of profits from export of computer software) holding that television news software exported by assessee was within the definition of 'customized electronic data' occurring in clause (b) of the Explanation to Sec. 80HHE of the Act (defining computer software to mean any computer programme recorded on any disc, tape, perforated media or other information storage device and includes any such programme or any customized electronic data which is transmitted from India to a place outside India by any means). It noted that as per the agreement between the assessee and NTVI, it was agreed that assessee would be responsible for the production of the entire software (programming) for a 24-hour Indian news channel which would be supplied to NTVI who would in turn broadcast the said channel through STAR TV. The Court observed that the assessee was able to demonstrate that

the television news software produced by it was indeed 'customized electronic data' which was exported from India and that the entire process of making the programmes was to meet the requirement of STAR TV. It held that in the definition of computer software the term 'any customized electronic data' is preceded by 'or' which clearly indicates that any customized electronic data would also be considered to be 'computer software' under the inclusive part of the definition and held that the expression 'any customized electronic data' was to be construed liberally. It rejected the Revenues contention that 'any customized electronic data' necessarily had to be a computer software.

New Delhi Television Ltd-TS-365-HC-2017(DEL) ITA No. 40 of 2005 dated August 31, 2017

315. Where the Assessee, engaged in the manufacture of voice and fax encryptions, imported necessary hardware as well as corresponding software and thereafter customised and modified the software before loading it to hardware, the Court dismissing the Revenue's appeal, held that the said activity amounted to "manufacture" of an article or a thing and, thus the Assessee was eligible for deduction u/s 80-IB.

CIT vs. Shoghi Communication Ltd. (2017) 84 taxmann.com 198 (HP) (IT Appeal No. 5/2007 dated August 3, 2017)

316. The Court dismissed the appeal of the Revenue and held that the Assessee (Supporting Manufacturer) would be eligible for deduction u/s 80HHC(1A) irrespective of the Principal Exporter obtaining Trading House Certificate ("THC") from DGFT. The Court rejected the contention of the Revenue that as the Principal Exporter had not been able to obtain THC from DGFT which was an essential condition for obtaining deduction by the Assessee. It held that mere nongrant of the renewal of the THC by the DGFT to Principal Exporter would not disentitle the Assessee from claiming deduction especially when Principal Exporter had duly made the application and the same was pending at the end of DGT and the Principal Exporter had issued a certificate stating that he had not claimed any deduction u/s 80HHC on the Exports made out of the Purchases from the Assessee.

CIT vs. Arya Exports & Industries (2017) 99 CCH 0194 Del HC (ITA No. 206/2005 dated August 18, 2017)

317. The Tribunal dismissed the appeal of the Revenue and held that for the purpose of determination of quantum of profit eligible for deduction u/s 80-IA the absorbed losses or depreciation from eligible business incurred prior to the initial year were not to be considered for determination of eligible profits earned during the year. It observed that the brought forward losses and depreciation being absorbed already could not be notionally brought forward for adjustment again.

DCIT vs. Sankalp International (2017) 50 CCH 0245 Jai. Trib (ITA No. 504/JP/2017)

318. The Tribunal dismissed the appeal of the Revenue as well as the Assessee (treating the grounds of appeal challenging addition u/s 68 as not pressed) and held that the Assessee (a credit cooperative society) would be eligible for deduction u/s. 80P in respect of additions made u/s. 68. The Tribunal held that although the credit against FDRs could not be explained and the addition was made u/s 68 but it could not be held that the Assessee had not generated the same from its business of banking or providing facilities to its members. Accordingly, it held Assessee would be entitled to deduction u/s.80P.

Aman Chote Vyapari Sahakari Pat Sanstha Ltd. vs. DCIT TS-374-ITAT-2017 (ITA No. 1183 to 1190/Pun/2012 dated August 11, 2017)

319. The Court dismissed the appeal of the Revenue and held that the programme produced by the Assessee (engaged in production of news software television programme) by collecting news by receiving input in audio and video footages, editing / processing the same and, thereafter, converting into machine signal fell within description of 'computer software' under clause (b) to Explan. to sec 80HHE (deduction in respect of profits from export of computer software) and the Assessee was eligible to claim deduction u/s 80HHE in respect of the television news software produced and exported.

CIT vs. NDTV (2017) 85 taxmann.com 3 (Del HC) (ITA No. 40/2005 dated August 31, 2017)

320. Where the claim of the assessee (engaged in bottling LPG into cylinder) u/s 80HH, 80I and 80-IA was disallowed by the Revenue on the ground that it was not an industrial undertaking as it was not engaged in production/manufacturing as there was no change in the chemical composition of the Gas, the Apex Court held that since the LPG obtained from the refinery underwent a complex technical process in the assessee's plants and was clearly distinguishable from the LPG bottled in cylinders and the process carried out by the assessee made LPG suitable for domestic use by customers, it was an industrial undertaking eligible to deduction u/s 80HH, 80I and 80-IA. It held that the activity carried out by the assessee amounted to production.
Hindustan Petroleum Corporation Ltd TS-314-SC-2017(CIVIL APPEAL NO. 9295 OF 2017 dated August 3, 2017)
321. Where the assessee, a co-operative society carried on the business of banking for the public at large i.e. its operation was not confined exclusively to its members but also extended to outsiders as well without adequate approval from the Registrar of Societies, the Apex Court denied the assessee deduction u/s 80P(2)(a)(i) of the Act as the activity of the appellant was in contravention of the Co-operative Societies Act.
The citizen co-operative society TS-326-SC-2017(CIVIL APPEAL NO. 10245 OF 2017 dated August 8, 2017)
322. Where deduction u/s 80IC of the Act was omitted to be claimed by the assessee in its original/revised income tax return filed electronically and the AO had not brought anything on record showing any infirmity in amount of deduction claimed by assessee by way of filing separate letter during the course of assessment proceedings, relying on the decision in the case of Jute Corporation of India Ltd [187 ITR 688 (SC)], the Court held that the assessee was entitled to deduction u/s 80 IC of the Act.
DyCIT vs India Glycols Ltd (2017) 51 CCH 0089 KoITrib. ITA No. 1628 / kol / 2014 dated 15.09.2017
323. The AO in the case of the assessee claiming deduction u/s 80-IC observed that the unit (eligible for deduction u/s 80-IC) in Himachal Pradesh which was selling the products to related concerns had earned abnormally higher profits compared to Delhi Unit of the assessee and accordingly, rejected the GP declared by the assessee and adopted a lower GP as per the provisions of section 80-IA(8) r.w.s. 80-IC. The CIT(A) deleted the addition made by the AO on the ground that the AO had without pointing out any mistake in the audited accounts of the assessee and merely on the basis of the comparison with Delhi unit had adopted lower GP which was not justified. The Tribunal upheld the order of CIT(A) and held that AO's invocation of section 80-IA(8) r.w.s 80-IC was not valid since the AO had not brought any valid material on record to show that there was some arrangement between the 2 units of the assessee for inter-unit transfer of goods. The Court observed upheld the order of the Tribunal.
PCIT & ANR. Vs. HARPREET KAUR & ANR. (2017) 99 CCH 0140 DelHC ITA 141/2017, 142/2017 dated 24/07/2017
324. The assessee had earned interest income from fixed deposits kept with bank in order to avail credit facility for export and claimed deduction of 90% of the interest earned on fixed deposits as per explanation (baa) to section (4C) of section 80HHC (which provides that export business profits would be computed after deducting 90% of interest included in such profits and such business profits would be then allowed as deduction u/s 80HHC). The AO disallowed the deduction contending that the interest income was not business income and was income from other sources. The CIT(A) and the Tribunal upheld the order of AO. The Court held that interest earned on deposits with bank which were kept for export business would be in the nature of business income and allowed the deduction under Section 80HHC as claimed by the assessee.
LAXMINARAIN KHETAN vs. ITO (2017) 99 CCH 0137 AllHC ITA No. 321 of 2007 dated 28/07/2017
325. The Tribunal rejected the claim of the Assessee that no addition u/s 41(1) (remission / cessation of trading liability the deduction of which has been allowed in the previous years) could be made during the year under consideration since the income of the Assessee was exempt u/s 80P(2) in the

previous years. It held that if the contention of the Assessee was to be accepted it would render provisions of 41(1) infructuous where the Assessee was eligible for deduction under Chapter VIA. The Tribunal further observed that as per sec 80AB the deduction u/s 80P has to be computed in accordance with the provisions of the Act which includes sec. 41(1) and, therefore, the income has to be first computed taking into consideration the provision of sec 41(1) and, thereafter, deduction u/s 80P has to be determined. The provisions of the Act, therefore, have to be read harmoniously and in such a manner that none of the provisions are rendered infructuous.

M/s Rajasthan State Co-operative Bank Ltd. vs. ACIT TS-270-ITAT-2017 (ITA No. 266/Jp/2013 dated April 17, 2017)

326. The Tribunal upheld assessee's action of treating the price at which Gujarat Electricity Board ('GEB') supplied electricity to assessee as the 'market price' for transfer by captive unit for the purposes of deduction u/sec. 80IA(8) in respect of its power generation undertaking by following co-ordinate bench ruling in assessee's own case for earlier AY. The Tribunal distinguished Revenue's reliance on Calcutta HC ruling in ITC Ltd. (64 taxman.com 214) to contend that the rate at which electricity was purchased from Electricity Board could not be treated as market price, which assessee's captive generation plant could fetch in the open market. The Tribunal noted that Calcutta HC ruling related to period prior to introduction of the Electricity Act, 2003 and under the said Act there was no regulation in respect of market price when the Captive Generation plant notionally sells electricity to itself. Moreover, the Tribunal noted that except Calcutta HC in ITC Ltd, there were four judgements of other High Court in assessee's favour and six judgements of Tribunal in assessee favour which have taken a view consistent with a view taken by coordinate bench in assessee's own case for earlier year.

Add. CIT vs. Reliance Industries Ltd. TS-259-ITAT-2017 (ITA No. 4361/Mum/2012 dated April 12, 2017)

327. The Court reversed Tribunal's order and granted deduction u/s 80IB to new unit i.e. Unit II, of a manufacturer assessee. The Court rejected the stand of the Revenue that the new unit was formed by reconstruction or splitting up of existing unit [80IB(2)(ii)] The Court took note of the fact that the assessee made substantial investment in the form of capital and loan, the new unit has separate premises, separate labour force, separate license and electricity connection. The Court observed that that lower authorities ignored the fact that the condition stipulated in Section 80IB (2)(ii) to disentitle the Assessee from claiming a deduction applies, only if the formation of the new business took place via transfer of machinery and/or plant, previously used for any purpose. Therefore, it is not a mere transfer of plant and machinery, which is used previously for some purpose, but the fact that transfer is of such nature that it enables the formation of the undertaking qua which deduction is sought by an Assessee. The Court noted that it was not the Revenue's case that the transferred machinery enabled the formation of Unit II. Substantial expansion of existing business cannot disentitle assessee to claim Sec. 80IB benefit. The Court, also accepted assessee's contention regarding computation of Sec. 80IA deduction that once only losses of years beginning from initial AY can be brought forward for set off and Revenue cannot notionally bring forward losses of earlier years, which were already set off against other income of Assessee.

ACIT vs. Leo Fasteners TS-284-HC-2017 (Tax Case (Appeal) 533-538/2010 dated July 10, 2017)

328. The Court upheld Tribunal's order allowing Sec. 80-IA benefit to assessee-company [which was initially a small scale industrial undertaking ('SSI'), subsequently converted to medium scale undertaking]. The Court held that eligibility condition with respect to investment in plant and machinery ('P&M') was to be fulfilled only in initial AY (i.e AY 1997-98) and not in all ten consecutive AYs eligible for deduction. The Court rejected Revenue's stand that since assessee's investment in P&M exceeded the prescribed limit in relevant AYs, it was no more SSI unit to qualify for Sec. 80-IA deduction. It also further rejected Revenue's stand that the words 'previous year' occurring in Sec. 80-IA(12)(f) in the definition of SSI refers to the previous year of each of the AYs spoken of in Sec. 80-IA(6) by holding that the purpose of introducing Sec. 80-IA was to encourage industrial expansion and to incentivise investment in industries and if the eligibility for deduction under Section 80-IA were to be linked to such changing criteria beyond the initial AY, then the section itself would become non-workable. The Court further remarked that it is not expected that the investment for P&M in the initial AYs would remain static for the next ten years. It cannot be expected that if an industry is successful it would not expand.

CIT vs. International Tractors Ltd. TS-298-HC-2017 (ITA No. 1082/2005 dated July 20, 2017)

329. The Apex Court denied the benefit of section 80P to the assessee by holding that an assessee cannot be treated as a cooperative society meant only for its members and providing credit facilities to its members if it has carved out a category called nominal members. These are those members who are making deposits with the assessee for the purpose of obtaining loans, etc. and, in fact, they are not members in the real sense. Most of the business of the assessee was with this category of persons who have been giving deposits which are kept in Fixed Deposits with a motive to earn maximum returns. A portion of these deposits is utilised to advance gold loans, etc. to the members of the first category. It is found that the depositors and borrowers are quite distinct. In reality, such activity of the appellant is that of finance business and cannot be termed as co-operative society

The Citizens Cooperative Society Ltd vs ACIT- CIVIL APPEAL NO. 10245 OF 2017 dated 08.08.2017

330. The Tribunal allowed the claim of the assessee made u/s 10A and held that the AO/CIT(A) erred in denying the benefit on the alleged ground that the assessee did not carry out any manufacturing and was merely engaged in trading. On the basis of documentary evidence submitted by the assessee i.e. purchase & sale invoices, it observed that the assessee purchased unmounted, unpolished jewellery, mounted it in the semiprecious and precious stones in the silver and gold jewellery, polished it, made it marketable and then exported the same from its SEZ unit which amounted to manufacture.

Kamal Kishore Gupta vs. Ass. CIT (2017) 50 CCH 0233 JaipurTrib (ITA No. 469/JP/2015 dated August 1, 2017)

331. The Tribunal allowed deduction u/s 10B to the assessee in respect of duty drawback receipts forming part of EOU's profits and held that the manner of computing profits u/s 10B(4) did not require direct nexus with the business unlike section 80(IB). On a conjoint reading of section 10B(1) and 10B(4), it held that once an income formed part of business of eligible undertaking, there was no further mandate to exclude it from the quantum of profits eligible for deductions u/s 10B. Rejecting Revenue's reliance on Opera Clothings [TS-63-SC-2009] wherein it was held DEPB and duty drawback benefit was not available as a deduction for the purpose of computing relief u/s 80IB, it held that the condition for deduction u/s 80IB was that profits and gains were to be derived from eligible business and there was no such formula for computing the profit as provided in section 10B.

ITO vs Ambika Sadh-TS-408-ITAT-2017(Del)-ITA no. 6252 & 6253 / del / 2015 dated 28.08.2017

332. Where the assessee earned interest income from fixed deposits which were kept as security to obtain bank guarantee and the AO had disallowed the assessee's claim of deduction vis a vis the said interest income, the Tribunal upheld the order of the CIT(A) and held that the disallowance of deduction u/s 10A vis a vis interest income was to be restricted to net interest income (after setting off interest cost incurred to earn the income) as opposed to total interest income as done by the AO.

Balaji Export Co. vs. assistant Commissioner of Income Tax [ITA NO.7547 6691 (2017) 51 CCH 0017]

d. Income from Capital Gains

333. The Tribunal allowed deduction u/s 48 to the assessee-individual with respect to expenses incurred for clearing the encumbrances on the shares while computing capital gains on sale of shares of Navbharat Power (NPPL) [held by him in individual capacity as well as shares held by a company - MEVPL in which he was an MD]. Assessee had entered into an agreement with ESSAR power Ltd for sale of NPPL' shares as per which the shares were required to be free of all encumbrances and hence to safeguard the transaction, the assessee (in his individual capacity and also as MD of MEVPL) agreed to pay financial compensation to settle the dispute with PVP group (with whom the shares of MEVPL group were pledged).

Y. Harish Chandra Prasad [TS-385-ITAT-2017(HYD)] ITA No. 1592/Hyd/2014

334. The Tribunal upheld the order of the CIT(A) and held that where there were 2 valuation reports for the purpose of determining stamp duty value u/s 50C (viz. the Registered Valuer's Report and the DVO's Report), and the DVO's report had not taken into account certain vital facts, the CIT(A) was justified in rejecting the report of the DVO and accepting the Registered Valuer's report. Accordingly, it rejected the contention of the Revenue that it was not open to the appellate authority to reject the DVO's report and held that since determination of "fair market value" is a factual determination, if the DVO's report was proved wrong on facts then the appellate authority could adopt other methods of valuation.

DCIT vs. Bajaj Chemcials (2017) 50 CCH 0265 Kol Trib (ITA No. 640/Kol/2015 dated August 23, 2017)

335. The assessee had invested sale proceeds from transfer of residential house property in another residential house property and had claimed deduction u/s 54, the AO based on spot enquiries during regular assessment denied deduction u/s 54 as he was informed that the assessee had entered into a development agreement and demolished the impugned property in the subsequent year. Restricting itself to the claim for the relevant AY, the Tribunal held that the AO was unjustified in denying the deduction u/s 54 on the basis of an event which happened in a subsequent year. It held that since no such demolition occurred in the year in which claim was made, the AO could not travel back to the impugned AY and deny exemption.

Vikas Kumar TS-328-ITAT-2017(HYD)(ITA No. 758/Hyd/2017 dated July 26, 2017)

336. Where the AO sought to tax the gains arising on sale of assessee's land alleging that it was non-agricultural income in the past 5 AYs but the CIT(A) and the Tribunal post examining the relevant details (viz., copy of sale deed, revenue records, survey report, positive income/loss from cultivation of trees and vegetables reflected in the capital account) held that the land was in fact agricultural and deleted the addition of the AO, the Court held that the question before it was not a substantial question of law. It held that it was not for the Court to re-analyse evidence or determine whether evidence on record was sufficient to justify the finding and accordingly dismissed the Revenue's appeal.

CIT vs. Dr. N. Rangabashyam (2017) 99 CCH 0185 ChenHC T.C.A. No. 429 of 2017 dated 02/08/2017

337. During AY 1995-96, the assessee had entered in to an agreement for selling rights in an industrial plot in Mumbai and had simultaneously shifted its industrial undertaking to Nashik (in a non-urban area) but the agreement could not materialize and land was finally sold in 2004 to a new developer and immediately after receiving the sale proceeds the assessee had invested the money in purchasing plant and machinery for the factory at Nashik (which was already operational in 1995) and deposited part of it in capital gains account scheme. The Tribunal allowed the assessee company's claim of exemption u/s 54G with respect to capital gains arising on sale of land and rejected Revenue's denial on the ground that the investment was made in plant and machinery after 9 years of shifting of industrial undertaking. It further clarified that there was no precondition in the section that new machinery should be purchased at the time of shifting of industrial undertaking and that the assessee could purchase machinery even after shifting and commissioning of business from the new premises.

Everest Industries Ltd. vs. ACIT-TS-410-ITAT-2017(Mum)-ITA no. 815/mum/2007 dated 15.09.2017

338. The Tribunal, allowed the assessee individual section 54F exemption for AY 2010-11 with respect to long term capital gains (LTCG) arising to assessee-individual upon flat sold on November 18, 2009 and rejected Revenue's action of treating the gains as short term. It rejected Revenue's contention that the date of registration i.e October 6, 2007 should be considered as acquisition date, and relying on the Delhi HC decision in Gulshan Malik held that the date of execution of agreement to sale executed by builder in favour of assessee (i.e 16 november 2006) was to be treated as date of acquisition. It also rejected Revenue's contention that assessee had intentionally waited for mechanical lapse of 36 months and had deliberately put the date on agreement as November 18, 2009 to avoid the payment of tax, despite stamp duty paid earlier on November 6, 2009 and held that every individual had a right to deal his assets as per his own choice and convenience and the Revenue would not dictate any particular way unless otherwise the transaction was prohibited by law.

Michael Jude Fernandes vs ITO-TS-399-ITAT-2017(Mum)-ITA no. 3557/mum/2014 dated 18.08.2017

339. The Tribunal, applying the provisions of section 55A(2)(a) held that no reference could be made by the AO to the DVO if in the opinion of the AO value shown was very high i.e more than the fair market value of the property as on 1st April, 1981. Accordingly, it held that the estimation of the fair market value of the property as on 1st April 1981 as made by the assessee had to be accepted.

Royal Calcutta Turf Club & Anr vs Deputy CIT [2017] 51 CCH 78 Kol Trib. ITA No. 231/Kol/2013, 204/Kol/2013

340. The Apex Court, relying on the decision in the case of Ghanshyam (HUF) [TS-5026-SC-2009-O], set aside High Court order and held that as per the provisions of the amended section 45(5) in the Income Tax Act, enhanced compensation and interest thereon received by the assessee by an interim order in respect of land acquisition was taxable in the year of receipt.

Chet Ram (HUF) vs CIT-TS-423-SC-2017 Civil appeal No. 13053 / 2017 dated 12.09.2017

341. The Tribunal held that the signature bonus received by the assessee for demitting 60% of rights in the oil fields was a non- taxable capital receipt. It noted that the amount was received by assessee under the joint operation agreement ('JOA') pursuant to surrendering 60% of rights to other companies and rejected revenue's stand that since the JOA was entered in respect of a business already yielding revenue, the amounts were revenue in nature. It held that when revenue yielding ongoing concern was transferred there would only be capital gain or capital loss. Further it noted that the transaction did not result in any capital gain considering that for transfer of 60% share in oil fields (having book value of Rs. 882.86 crores), assessee received only sum of Rs. 219.76 crores.

Oil & Natural Gas Corporation Ltd-TS-428-ITAT-2017(DEL) ITA No.1967/Del/2014 dated 14.09.2017

342. The Tribunal upheld assessee's right to claim capital gains exemption u/s 54F in a belated return of income filed in compliance to a notice issued u/s 148 and held that section 54F did not cast any statutory obligation on part of the assessee to file its return of income within the stipulated time period contemplated u/s 139 or 148 of the Act as a precondition for claim of exemption. Further it rejected Revenue's contention that return was invalid since it was filed beyond the specified 30 days period from the date of service of notice and held that the same would not cease to be a return of income filed pursuant to the notice u/s 148, though involving some delay.

Amina Ismil Rangari vs ITO-TS-424-ITAT-2017(Mum) I.T.A. No. 6261/Mum/2013 dated 15.09.2017

343. The Tribunal relying on Karnataka HC ruling in C.N. Anantharaman (ITA No. 1012/2008 dated 10/12/2014) allowed the assessee deduction u/s 54 against capital gains on sale of land appurtenant to the residential house owned by assessee held that for claiming deduction u/s 54 it was not necessary that the whole of the residential house should be sold, as the legislature has used the words residential house 'or' land appurtenant thereto which is distinctive in nature. The Tribunal rejected Revenue's stand that since the capital asset sold by assessee was the 'land appurtenant to the house' but not the 'residential house' itself, deduction could not be allowed. With respect to 'cost of acquisition of property sold' u/s. 49(1) for the purposes of computing capital gains, Tribunal noted that the land sold during the year was part of the portion of the property inherited by assessee from his mother in 1994 (who had acquired the property in 1985 under a will). The Tribunal held that as far as assessee was concerned, the cost to immediate previous owner should be taken for the purposes of Sec. 49 and accordingly FMV of land as on 1985 was to be considered. The Tribunal rejected the AO's stand to consider circle rate of property as on April 1, 1981 as against market value determined by registered valuer. The Tribunal relied upon Allahabad HC ruling in Dinesh Kumar Mittal (193 ITR 170) wherein it was held that there is no rule to the effect that stamp duty valuation was to be taken as market value.

Sh. Adarsh Kumar Swarup vs. DCIT TS-285-ITAT-2017 (ITA No. 1228/Del/2016 dated March 23, 2017)

344. The Tribunal held that the AO is not entitled to make an addition to the sale consideration declared by the assessee if the difference between the valuation adopted by the Stamp Valuation Authority and that declared by the assessee is less than 10%.

John Fowler (India) Pvt Ltd vs DCIT-ITA No. 7545/Mum/2014 dated 25.01.2017

e. Income from Other Sources

345. Where the assessee had leased premises which was fully furnished, centrally air conditioned and with adequately power backed generator and offered the rental income under the head 'income from house property', after claiming deduction u/s 24(a), the Court upheld the AO's order and held that the rental income of the assessee was composite rent i.e. both for building as well as the machinery and furniture which was taxable u/s 56(2)(iii). It further held that the assessee was entitled for claim of depreciation u/s 57(iii) and directed the AO to give effect for the same.

JAY METAL INDUSTRIES PVT. LTD. vs. CIT (2017) 99 CCH 0101 DelHC ITA 308/2016 dated 13/07/2017

346. The Tribunal dismissed the Revenue's appeal and held that Signature villa at Dubai received as 'gift' by assessee from Dubai's leading private limited construction company ('donor company') was not taxable in the hands of the Assessee. It rejected Revenue's stand that the gift transaction was mere camouflage for payment of consideration for brand endorsements performed by the Assessee for donor company, noting that Assessee was not under any obligation to undertake any sort of brand endorsements. The Tribunal further noted that Assessee's presence at the donor company's annual day celebration and further addressing its employees was a mere goodwill gesture and did not mean that Assessee was involved in brand endorsement for donor. Further, the Tribunal observed that amended Sec 56(2)(vii) (which now includes gift of immovable property under its ambit w.e.f October 1, 2009) was not applicable for relevant AY (2008-09) and therefore would not apply in the instant case.

ACIT vs. Sharukh Khan TS-354-ITAT-2017 (ITA No. 8555/Mum/2011 dated August 18, 2017)

f. Assessment / Re-assessment / Revision / Search Proceedings

Assessment

347. Where the assessee trust, engaged in running various educational institutions obtained a new PAN for one of its colleges for the purpose of opening a bank account, the Court held that the AO was unjustified in initiating reassessment proceedings in the case of the assessee on the allegation that the college having obtained a separate PAN having substantial bank balance ought to have filed a return of income, moreso when the receipt in the bank account had already been offered to tax by the assessee. Since the AO had not disposed of all the objections filed by the assessee, the Court directed the assessee to file supplementary objections and also directed AO to re-examine the peculiar facts, assessee's original and additional objections and granted the assessee interim relief till the AO passed a fresh order

Sardar Vallabhbhai Patel Education Society vs ITO-TS-404-HC-2017(Guj) SCA No. 17878 of 2016 dated 11.09.2017

348. The Court quashed assessment order passed pursuant to Tribunal's remand on the ground that order was barred by limitation u/s 153(2A) [which prescribes time limit for framing assessment pursuant to Tribunal order setting aside or cancelling assessment]. It rejected Revenue's stand that section 153(2A) limitation applied only where there was complete setting aside of assessment and not when the proceedings were remanded to the AO with directions from Tribunal. Noting that in the present case, the assessment in respect of five issues (out of total seven issues) was set aside and remanded back for a fresh determination, the Court referred to the intention of legislature behind inserting section 153(2A) and highlighted the distinction between Sec. 153(3)(ii) [which provides that

orders passed pursuant to any direction or finding of appellate authorities are not subject to any time limit] and Sec. 153(2A). Accordingly, it held when the assessment on an issue is set aside and the matter remanded with a direction that the issue has to be determined afresh, section 153(2A) of the Act would get attracted.

Nokia India Pvt Ltd vs Dy.CIT-TS-425-HC-2017(DEL)-W.P. (C) No. 1773/2016 dated 21.09.2017

349. The Court held that action of the DRP in granting time to the assessee till 24th July 2017 to submit documents and then passing the order on the same day itself and that too without taking on record the documents produced by the assessee was clearly unreasonable and in violation of the principle of natural justice. Accordingly, the Court set aside the impugned order and remanded the matter to the file of DRP for fresh adjudication.

Systra SA Project Office vs DRP -W.P.(C) 7114/2017 dated 18.08.2017

350. The Tribunal held that where the requisite notice u/s 143(2) was not served on the assessee within the time prescribed by law, the assessment framed by AO was time barred. It held that though service of the notice was not a condition precedent to conferment of jurisdiction upon the AO to deal with the matter, it was a condition precedent to making of the order of assessment. Accordingly, it held that the s. 143(2) notice had to be issued not only before the expiry of the limitation period but had also to be served upon the assessee before the expiry of the limitation period.

Cameron (Singapore) Pte Ltd vs ADIT-IT(TP)A no 2/JP/2014 dated 27.07.2017

351. The Tribunal held that when books of account were rejected and income was computed by applying net profit rate, same books of accounts could not be made basis for making disallowance of specific expenses and claim of various expenses including depreciation was to be allowed.

SUPERIOR ROADLINES & ANR. vs. INCOME TAX OFFICER & ANR. - (2017) 51 CCH 0137 DelTrib - ITA Nos. 2827 & 2828/Del/2011, 3021 & 3022/Del/2011 dated 28.09.2017

352. The Court dismissed writ petitions filed by several Assesseees, challenging constitutional validity of retrospective amendment to Section 142(2A) by the Finance Act, 2013. expanding the scope of special audit to cover 4 new grounds viz. (i) volume of accounts, (ii) doubts about the correctness of accounts, (iii) multiplicity of transactions in the accounts and (iv) specialized nature of business activity of the assessee. It held that the Retrospective amendment to section 142(2A) was constitutionally valid as in fiscal matters the Legislature has the ability to amend the law retrospectively. It also noted that section 142(2A) does not confer any vested right on the assessee, which could not be taken away by retrospective amendment as it was enacted to confer an important power on the revenue to curb tax evasion and facilitate investigation into the accounts of an assessee for the proper determination of tax liability. Therefore, even if the amendments to section 142(2A) were given retrospective effect, the same would be within the powers of the Legislature.

Sahara India Financial Corporan. Ltd. & others vs. CIT TS-352-HC-2017 (WPC 3222/2008 & others dated August 23, 2017)

353. The Court, held that where the Department, by passing an ex-parte order, transferred assessee's case without supplying the assessee with necessary reasons, information and documents, the transfer of assessment was wholly irrelevant and arbitrary and the order of transfer was liable to be quashed

Genus Electrotech Ltd vs UOI (2017) 100 CCH 0014 GujHC SCA No. 10328 of 2017 dated 13.09.2017

354. The SB of the Tribunal deleted addition in hands of Assessee (a cigarette manufacturing company) on account of alleged premium generated through sale of cigarettes at a price over and above the MRP using dubious method of twin branding of the product by holding that the evidences and material only indicated that in some clandestine manner the wholesale buyers had sent the money to fictitious bank accounts standing in benami names and the same was for discharging the liability of the Assessee was sans any material and there was no live link nexus to implicate Assessee . The SB observed that AO did not ascertain that the Assessee or its employees had actual control of the said benami bank accounts or the amount deposited in said bank accounts had gone to the coffers of the assessee;

Further, SB quashed AO's action in rejecting books of account and estimating assessee's income u/s. 145(2) by holding that once it was held that there was no material to implicate the Assessee then the presumption that Assessee was maintaining cash in bank account outside the books also failed.

M/s GTC Industries Ltd. vs. ACIT TS-324-ITAT-2017 (ITA No. 5996/Mum/1993 dated March 7, 2017)

355. Where the Madhya Pradesh High Court had quashed the transfer of jurisdiction from MP to Nagpur and had directed the CIT to pass a reasoned order, the Court held that the assessment proceedings initiated u/s 158BC by DCIT Nagpur and assessment order passed pursuant to the said proceedings were invalid being in contravention of the decision of the Court. It held that the assessee's participation in the proceedings u/s 158BC would not be hit by section 124(3) [which provides that a person is not entitled to question the jurisdiction of a AO after the expiry of 1 month from the date on which he was served with a notice u/s 142(1)/115WE(2)/143(2) or completion of the assessment where he has filed return u/s 139(1)/115WD(1)] since the return was filed in response to notice u/s 158BC and not u/s 142(1). It accordingly, dismissed Revenue's contention that the AO's order was valid as the assessee had participated in the proceedings.

Lalitkumar Bardia [TS-313-HC-2017(BOM)] ITA No. 127 of 2006 dated 11/07/2017

356. The Court admitted the Writ petition filed by an individual-Petitioner on linkage of Aadhaar-PAN required before filing return of income and issued interim direction to Income-Tax officer to allow the Petitioner to manually file Income tax return without insisting for Aadhaar/Enrolment number since the hearing was pending before the Apex Court on the challenge to constitutional validity of Aadhaar on grounds of privacy.

Prasanth Sugathan [TS-319-HC-2017(KER)] W.P. (C). No. 26033/2017 (D) dated 04/08/2017

357. In the assessment order, the AO mentioned that the assessment order was passed u/s 143(3)/153A. The CIT(A) allowed appeal of assessee on ground that assessment order was wrongly passed u/s 153A though it should have been u/s 143(3). Tribunal observed that no notice was issued u/s 143(2) and held that though notice u/s 143(2) did not give any jurisdiction to AO to make assessment u/s 143(3) but it was obligatory to issue notice u/s 143(2) before making assessment under Section 143(3) or Section 144. Since assessment was claimed to have been completed u/s 143(3), notice u/s 143(2) was mandatory and noncompliance thereof vitiated assessment. The Court upheld the order of the Tribunal.

CIT vs. MOINS IQBAL & ANR. (2017) 99 CCH 0143 AllHC ITA No. 168 of 2009, 169 of 2009 dated 28.07.2017

358. The assessee had failed to claim deduction u/s 80-G in the ROI and before the AO and had claimed the same before CIT(A). However, CIT(A) following the decision of the Hon'ble Supreme Court in the case of Goetze (India) Ltd. Vs. CIT 284 ITR 323 did not allow the claim of the assessee since it was not claimed in the ROI or before the AO. Tribunal following the decision of the Hon'ble Supreme Court in the case of Goetze (India) Ltd held that the Tribunal had the powers to direct the AO to accept the claim of assessee, though the same had not been claimed in the ROI, directed the AO to allow the claim of deduction to the assessee. The Court upheld the order of the Tribunal

CIT vs. BRITANNIA INDUSTRIES LTD. (2017) 99 CCH 0104 KolHC ITA No. 03 of 2013 & ITAT No. 260 of 2012 dated 13/07/2017

359. Where the assessee had not claimed deduction u/s 80-IA in the return filed u/s 139(1) but had claimed in the return filed u/s 153A, the Court observed that the time limit for filing revised return had not expired and therefore, the deduction not claimed earlier could have been claimed in the revised return. If the claim could be made under revised return, the same could also have been made under the return filed u/s 153A. It further held that alternatively, the return filed u/s 153A was an original return and not revised return and therefore, on that ground also the deduction u/s 80-IA would be allowed to the assessee. Further, where the AO had denied deduction u/s 80-IB on the ground that the assessee was not developer but a contractor and the CIT(A) and the Tribunal had allowed the deduction on the ground that the assessee was engaged in development of road and was not a mere contractor as he had deployed his own capital, used his own management and expertise in maintenance and had to bear the risk, the Court upheld the view of the Tribunal.

PCIT vs. VIJAY INFRASTRUCTURE LTD. (2017) 99 CCH 0128 AIIHC ITA No. 29 of 2016 dated 12.07.2017

360. The assessee engaged in the business of civil construction and related services for the Government had lower profit margins. The AO, without rejecting the books of accounts of the assessee u/s 145 made addition to the income returned by the Assessee by estimating gross profit. The Court observed that it was sine qua non for the AO to come to a conclusion that the Books of Accounts maintained by the assessee were incorrect, incomplete or unreliable before the proceeding to make his own assessment. Since there was no finding by the AO regarding the books of accounts of the assessee being incorrect, the AO was not justified in estimating the profit of the assessee.

PCIT vs. MARG LIMITED (2017) 99 CCH 0125 ChenHC Tax Case Appeal No. 302 of 2017 dated 20/07/2017

Reassessment

361. The Apex Court dismissed the Revenue's SLP challenging the order of the HC which held that notice issued u/ 148 on assessee was time barred u/s 149 and that relaxation of time limit of sec. 149 as provided by sec 150 (assessment in consequence of finding given in an order passed, inter alia, in appeal by any authority) read with Explanation 3 to Sec. 153 was not applicable. The High Court noted that notice u/s 148 was issued on assessee in March, 2011 on the basis of a Tribunal order passed in case of one society (to whom assessee advanced loan), wherein it was held that interest income was not to be taxed in the hands of the said society but was taxable in the hands of assessee. The High Court held that the provisions of Sec. 150 read with Explan 3 to Sec. 153 would apply only if an opportunity of hearing had been given to the assessee before the Tribunal passed the order and as one essential ingredient of Explan 3 was missing and, the deeming clause would not get triggered and accordingly the bar of limitation prescribed by Sec 149 would not be lifted.

CIT vs. M/s Rural Electrification Corporation Ltd. TS-360-SC-2017 (SLP No. 19165/ 2014 dated August 28, 2017)

362. The Petitioner had purchased a bungalow for consideration of Rs.60 lakhs and while registering the sale deed paid an additional stamp duty. In the order of assessment u/s 143(3), the AO did not make any addition. However, he made reference to the District Valuation Officer (DVO) u/s 142A for his opinion on the fair market value of the property in question. The DVO estimated the fair market value as on the date of the sale at Rs.1.71 crore. After receipt of the valuer's report, the AO issued the notice u/s 148 for re-opening the assessment with the reason to believe that the assessee had undervalued the property and had made investment in excess of the amount declared. Accordingly, he held that the assessee had unaccounted investment as per the provisions of section 69 of the Act. The Court based on the judgment of Division Bench of the Court (wherein the reference to the DVO was held as invalid) held that the report of the DVO was also invalid. Further, it observed that the same information was available with the AO at the time of original assessment which was noticed by the AO, but which did not prompt him to make any addition except for calling of DVO's report which by itself could not form a ground for reopening of the assessment.

ANAND BANWARILAL ADUKIA vs. DCIT (2017) 99 CCH 0109 GujHC SPECIAL CIVIL APPLICATION NO. 6660 of 2013 dated 04/07/2017b

363. The Court allowed the Assessee's writ and quashed reassessment proceeding initiated beyond the period of four year from the end of the relevant AY viz AY 2005-06. It held that the AO erred in issuing notice u/s 148 seeking to deny the benefit under the India – UAE DTAA contending that i) the Assessee had not filed its TRC ii) Assessee's UAE residence permits was invalid as the Assessee resided outside UAE for more than 6 months. It held that these requirements were introduced w.e.f i) 1/04/2013 and ii) 28/11/2007, respectively and therefore would not apply to the relevant AY. Further, the Court noted that the Assessee during regular assessment had disclosed the relevant information to show that it was entitled for the benefits of DTAA with UAE and therefore reopening was on account of a mere change of opinion which was impermissible.

Prashant M. Timblo vs. CCIT TS-335-HC-2017 (WP No. 678-679/2013 dated July 25, 2017)

364. The Tribunal allowed the appeal of the assessee and held that in the absence of any independent application of mind the AO could not reopen the assessment u/s 148 acting merely under the information from the Investigation Wing that the Assessee had obtained accommodation entries in the form of share application money. It observed that the AO had arrived at a satisfaction that income had escaped assessment in a mechanical manner without due application of mind as there was no rational connection between the formation of belief and the seized material. Further, it held that there must be direct nexus between the material coming to the notice of the AO and formation of the belief that income had escaped assessment failing which no reopening could be done.

Baseasar Properties Pvt. Ltd. vs. ITO (2017) 50 CCH 0248 Del Trib (ITA No. 5750/Del/2016 dated August 18, 2017)

365. Where the original assessment proceedings were completed u/s 143(3) and the AO reopened the assessment after 4 years on the ground that the assessee had received unsecured loan from JP Infrastructure Pvt. Ltd. in which the shareholders of the assessee held beneficial interest exceeding 10% and therefore, such loan amount received was deemed dividend u/s 2(22)(e), the Court rejected the Revenue's contention that the assessee had not disclosed its share holding pattern to enable the AO to examine the applicability of Section 2(22)(e) at the time of original assessment proceedings. It observed that the assessee had made disclosures about the borrowings from J.P. Infrastructure in the return and did not have any onus to disclose its share holding pattern to enable the AO to examine the applicability of Section 2(22)(e). Accordingly, it held that if the AO desired to scrutinize this aspect of the matter it was always open for him to call upon the assessee to provide for such details as and when necessary. Accordingly, it held that the re-opening of the assessment was bad in law.

Gujarat Mall Management Company Pvt. Ltd. vs. ITO (2017) 99 CCH 167 GujHC Special Civil Application NO. 16590 of 2017

366. Where the AO issued notice u/s 148 alleging that the assessee had claimed a loss on speculative transactions, without disclosing the fact that the transaction was indeed speculative, the Court noting that the material relied on by the AO formed part of the return and accompanying documents filed by the assessee, held that there was thus no failure on the part of the assessee to disclose the material facts. Based on the submission of the assessee, it further observed that the issue was also examined by the AO during the regular assessment.

Adani Wilmar Limited vs. DCIT (2017) 99 CCH 0175 GujHC Special Civil Application NO. 11220 of 2017 dated 09/08/2017

367. Where the AO issued notice u/s 148 alleging that income had escaped assessment in the hands of the assessee as it had claimed deduction u/s 80IC but filed its return after a delay of 46 days, the Court noting that the assessee's claim was not disputed on merits, quashed the notice, order disposing of the objections and consequent assessment order. It also set aside the rejection of application filed before CBDT for condonation of delay in filing ROI observing that the delay in the assessee's case was not so extraordinary that it could not be condoned.

Fiberfill Engineers vs. DCIT (2017) 99 CCH 0188 DELHC (W.P. (C) No. 3935/2015 dated 10/08/2017

368. Where the AO re-opened the assessment u/s 148 (beyond 4 years period) on the ground that the assessee had received amount from the company (where he was substantial shareholder) which was taxable as deemed dividend u/s 2(22)(e) and made the additions, the Tribunal observed that the return of income was processed u/s 143(1) and rejected the assessee's contention that in absence of any fresh material after order u/s 143(1), reassessment was based on change of opinion on the ground that an intimation issued u/s 143(1)(a) could not have been held to be an assessment and accordingly, there was no change of opinion. It further rejected the assessee's argument that the amount received from the company was advance received towards agreement to sell agricultural land and was therefore in the nature of ordinary course of business which could not have been considered as deemed dividend u/s 2(22)(e) noting that sale-deed for the land was not registered, there was no mention in the company's 'books of account' of any transaction in respect of the property under consideration and the company had only 2 directors and the assessee was a director as well as the

chairman of the company. Therefore, the transaction was for avoiding deemed dividend taxation. Accordingly, it upheld the reassessment proceedings initiated by the AO.

Kapil N. Shah [TS-357-ITAT-2017(Mum)] I.T.A. No. 1580/Mum/2013 dated 11/08/2017

369. Where the AO had re-opened the assessment after 4 years by issuing notice u/s 148 on the ground that i) the Petitioner was not allowed to claim deduction u/s 10B in respect of one of its unit where it had incurred a loss; ii) the Petitioner was not bringing any sale proceeds in India from rendering manufacturing services to its AEs, the Court observing that both the issues were examined by the AO at the time of original assessment proceedings and that there was no allegation that there was a failure to disclose fully and truly all material facts, quashed the notice issued u/s 148.

Swarovski India Pvt. Ltd. vs. DCIT (2017) 99 CCH 0214 DelHC W.P.(C) 5807/2014 dated 30.08.2017

370. The Court dismissed assessee's writ challenging notice issued u/s 148 and upheld reopening of assessment for AY 2009-10 (beyond 4 years period) which was based on fresh material unearthed by the IT department through the investigation wing indicating that purchase made by assessee from one supplier was bogus. It rejected assessee's stand that since the entire issue of genuineness of purchases was examined by AO during original scrutiny assessment, reopening beyond 4 years was invalid and held that the purchases from relevant supplier were admittedly not part of original proceedings, **and therefore** neither the question of change of opinion nor the concept of full disclosure would have a bearing. It further **noted** that relevant supplier had received funds of Rs. 4.48 crores from the assessee which were immediately withdrawn in cash and that summons issued by the department on the supplier were not responded to and moreover the supplier was not found to be existing at the given address.

Gujarat Ambuja Exports vs DCIT-TS- 406-HC-2017(GUJ)- SPECIAL CIVIL APPLICATION NO. 10745 of 2016 dated 11.09.2017

371. Where the Assessing Officer finalized the re-assessment **proceedings** without having first disposed of the objections of the assessee, the Court **allowed** assessee's writ **and** quashed the assessment order passed by AO and held that the Assessing Officer was bound to furnish reasons within a reasonable time and dispose of the objections filed by the assessee by passing a speaking order. Since the procedure required to be followed was not adhered to, relying on the decision in the case of GKN Driveshafts (India) Ltd, held that the Assessing Officer was not justified in finalizing the assessment without disposing the objections of the assessee

Jayanthi Natarajan vs ACIT (2017) 100 CCH 0016 Chen HC W.P. No. 1905 of 2017 & W.M.P No. 1925 of 2017

372. The Petitioner, engaged in business of selling, purchasing and developing land, sold plot of land and offered the sum as long term capital gain. During the regular scrutiny proceedings u/s 143(3), the AO observed that the assessee was in business of purchase and development of land and had shown land as stock in trade. Therefore, he held that income earned by the assessee through sale of land was business income and not capital gains. He rejected the contention of the assessee that no notice u/s 143(2) was served on the assessee and therefore the assessment proceedings were not valid. The CIT(A) held that the assessment proceedings were invalid since there was no proof of service of notice u/s 143(2) on the assessee. He did not give any finding on the merits of the case. Subsequently, the AO issued notice u/s 147 for reopening the assessment of the assessee. The Court rejected the Petitioner's contention that there was change of opinion by the AO since this aspect was covered at the time of original assessment proceedings. It held that assessment order passed u/s 143(3) was set aside by CIT on the ground of invalidity and accordingly, since there was no original assessment, there cannot be case of change of opinion. It further held that merely on the ground that the reasons recorded by the AO proceeded on the same basis on which he had already made additions but which failed on account of setting aside the order of assessment by CIT, that would not preclude the AO from carrying out the exercise of reopening of the assessment.

KRISHNA DEVELOPERS AND COMPANY vs. DCIT (2017) 99 CCH 0145 GujHC SPECIAL CIVIL APPLICATION NO. 8352 of 2017 dated 25/07/2017

373. Where the original assessment proceedings were completed u/s 143(3) and notice u/s 148 was issued for re-opening the assessment after four years from the end of relevant AY with the reason to believe that expenditure in connection with dividend income earned was not disallowed u/s 14A r.w.Rule 8D, the Court noting that the assessee's return of income for the impugned AY was subject to multiple scrutinies u/s 143(3), 263, 147 (which was challenged in the writ proceedings and set aside), held that the Revenue had more than sufficient opportunity to scrutinize the returns of the Petitioner and this issue was never raised at the time of original assessment proceedings u/s 143(3) and proceedings u/s 263. Observing that there was a full disclosure by the assessee of all the material facts relating to the exempt income, it held that the notice under Section 148 was bad in law.

UNITECH LIMITED vs. DCIT (2017) 99 CCH 0141 DelHC W.P. (C) 12324/2015 dated 24/07/2017

374. Where the notice u/s 148 was issued to a company which had amalgamated with Petitioner and had therefore ceased to exist on the date of issue of notice, the Court held that the proceedings u/s 148 were void ab initio since the company had ceased to exist by reason of amalgamation with the Petitioner.

BDR Builders & Developers Pvt. Ltd. vs. ACIT (2017) 99 CCH 0142 DELHC W.P. (C) 2712/2016 dated 26.07.2017

375. Where the assessment was completed u/s 143(3) and subsequently the AO re-opened the assessment of the assessee by issuing notice u/s 148 with the reason to believe that i) the assessee had erroneously claimed 1/5th of IPO expenditure as the expenses did not qualify for deduction u/s 35D since the assessee had not commenced new business and ii) the assessee had not disallowed interest expense u/s 14A r.w.Rule 8D(ii) against the dividend income earned, the Court held that since the claims of the Petitioner were thoroughly scrutinized during regular assessment u/s 143(3), the reasons to believe recorded by the AO were nothing but a mere change of opinion. Accordingly, it quashed the notice issued u/s 148 and the assessment order passed.

BHAGVATI BANQUETS AND HOTELS LTD. vs. DCIT (2017) 99 CCH 0110 GujHC SPECIAL CIVIL APPLICATION NO. 323 of 2014 dated 06.07.2017

376. The Petitioner was issued notice u/s 148 on 23/03/2015 by one AO and, subsequently another AO, without obtaining approval of Additional CIT, issued a fresh notice u/s 148 on 18/01/2016 and supplied the reasons to believe that the assessee had obtained accommodation entries of Rs. 13.5 crores based on the information received from Investigation wing. The Court observed that the Revenue did not pursue the proceedings u/s 129 but issued fresh notice u/s 148 on 18/01/2016 without obtaining approval of Additional CIT. It further observed that the reasons to believe were communicated vide one single sentence without any supporting material. Accordingly, it held that there were numerous legal infirmities which lead to inevitable invalidation of all the proceedings. Therefore, it set aside both the notices issued u/s 148 and the consequential assessment order.

MASTECH TECHNOLOGIES PVT. LTD. vs. DCIT (2017) 99 CCH 0102 DelHC W.P.(C) 2858/2016 & C.M. APPL.11983/2016 dated 13.07.2017

377. The AO issued notice u/s 148 for reopening assessment of Petitioner (charitable trust) for AY 2009-10 with the reasons to believe that the Petitioner during AY 2011-12 had entered into business transfer agreement with Ananya Finance for Inclusive Growth Pvt Ltd., (AIFG) to transfer on slump sale basis its assets and liabilities for consideration of Rs. 45 crores and at the same time it had given Rs. 45 crores as corpus donation to another trust for subscribing the share capital of AIFG. Therefore, the Petitioner had routed funds to AFIG through the trust in the form of Share Capital and had created complex structure to siphon of funds with a view to earn profit. Further, the Petitioner had borrowed funds from certain financing institutions and had lent to NGOs for lending to poor women and accordingly, this activity of lending money could not be said to be for 'relief to poor' as the Petitioner was not directly reaching out to poor but was acting as a mediator. Accordingly, the Petitioner had been carrying out the activity in the nature of trade, commerce of business and not charitable activity. The Court observed that issue of transfer of assessee's business to AFIG took place during AY 2011-12 and such issue was, therefore, not relevant for AY 2009-10. It further observed that the AO had

examined these issues during original assessment. Accordingly, it held that any attempt to re-examine these issues would be considered as change of opinion which was not permissible. Accordingly, it set aside the notice issued u/s 148.

FRIENDS OF WWB INDIA vs. DCIT (2017) 99 CCH 0123 GujHC SPECIAL CIVIL APPLICATION NO. 17108 of 2014 dated 13.07.2017

378. The original assessment proceedings were completed u/s 143(3) and the AO re-opened the assessment u/s 147 after expiry of the 4 years from the end of the relevant AY on the ground that the Petitioner had failed to disclose fully and truly all material facts and with the reasons to believe that i. the Petitioner had claimed exempt income but did not disallow any expense under section 14A. ii. while computing the deduction u/s 10A, the Petitioner excluded telecommunication charges both from the export turnover as well as total turnover. iii. The Petitioner had claimed deduction u/s 35D which it had not claimed in the earlier 2 years. iv. The Petitioner had claimed deduction towards payment for purchase of software license which was a capital expenditure. v. Depreciation on certain items of computer peripheral was wrongly claimed @ 60% instead of 25% since the same was wrongly treated as a part of "computer system" instead of "Plant and Machinery." vi. The Petitioner had not furnished details of payment exceeding Rs. 1 lakh as required by AO in the course of original assessment proceedings. The Court observed that the AO's reason for re-opening the assessment was not based on any tangible material but was a mere change of opinion since all these information were available with AO at the time of original assessment. Accordingly, it held that there was no failure by the assessee to make a true and full disclosure and the re-assessment was bad in law.

HCL TECHNOLOGIES LTD. vs. DVCIT & ANR. (2017) 99 CCH 0124 DelHC W.P.(C) 8164/2010 dated 20/07/2017

379. Where the assessee's ROI was processed u/s 143(1) and there was no regular assessment proceedings u/s 143(3) and thereafter, the AO issued a notice u/s 148 on the ground that the income of the assessee had escaped assessment, the Court reversed the Tribunal's order quashing re-assessment proceedings on the ground that since the AO had considered all the material while preparing intimation u/s 143(1), there was change of opinion which was invalid. The Court held that intimation u/s 143(1) was an acknowledgment and not an order of assessment passed by the AO and therefore, it could not be said that the AO had framed any opinion. Accordingly, it held that the initiation of re-assessment proceedings was valid.

CIT vs. VAIBHAV CASTING PVT. LTD. (2017) 99 CCH 0111 AllHC ITA No. 569 of 2012 dated 18.07.2017

380. The Court allowed assessee's writ petition challenging notice u/s 148 by holding that reopening of assessment under the directives and compulsion of the audit party was impermissible. Even though no specific ground was raised in writ petition claiming that reopening was based on audit objection, the Court took cognizance of the fact that such contention was raised in objections filed before AO which was not disposed by AO. The Court called upon the Revenue to produce the original assessment file and noted that AO had not accepted the audit objection and had written a letter to CIT as well as Deputy Accountant General of Audit stating the detailed reasons as to why the stand of audit party not correct. Notwithstanding this correspondence, reopening notice was issued on the same issue and, therefore, it was held by the Court that notice was issued under the directive and compulsion of audit party which was not permissible.

Nabros Pharma Pvt. Ltd. vs. DCIT TS-287-HC-2017 (Special Civil Application No. 18772 of 2014 dated July 12, 2017)

381. The Court held that where the audited accounts were already available with the AO and formed part of the assessment records, merely suggesting that there was a failure on the part of the Assessee to disclose material necessary for the purpose of making assessment without demonstrating that any fresh tangible material was available could not satisfy the precondition of reopening of assessment after more than four years from the end of the relevant AY.

Oracle India (P.) Ltd. vs. ACIT (2017) 83 taxmann.com 368 (Delhi) (W.P.(C) No. 7828/2010 dated July 26, 2017)

382. The assessee had filed return of income which was processed u/s 143(1). The AO re-opened the assessment u/s 147 based on information received from investigation wing that the assessee had received accommodation entries to the extent of Rs. 1.56 crores in the garb of share application money and that no return was filed by the assessee and therefore, income had escaped assessment. Subsequently, the AO observed that there was some clerical error in computing the escaped income and the accommodation entries were to the extent of Rs. 78 Lakh. The Court observed that the AO proceeded on the presumption that the assessee had not furnished ROI, however, the same was filed and processed u/s 143(1). It further observed that the AO had also erred in computing the extent of the accommodating entries. Accordingly, it held that the information received from the Investigation Wing could not have been said to be tangible material without a further inquiry being undertaken by the AO for forming reasons to believe for re-opening the assessment. Therefore, it held that the assessment was bad in law.

PCIT vs. RMG POLYVINYL (I) LTD. (2017) 99 CCH 0085 DelHC ITA 29/2017 & CM No.1009/2017 dated 07/07/2017

PCIT vs. SNG DEVELOPERS LIMITED (2017) 99 CCH 0106 DelHC ITA 92/2017 dated 12/07/2017

383. Where during the original assessment proceedings, the assessee had furnished details of 5 companies from whom it received share application money and the AO had examined these details and raised further queries which were duly answered by the assessee, the Court held that the AO was unjustified in initiating reassessment proceedings beyond a period of 4 years from the end of the relevant year based on a report from the DDIT (Investigation) stating that the said companies were mere paper companies as the said report did not have any specific adverse findings vis-à-vis the assessee and the AO had failed to conduct further independent verification of the alleged paper companies. It held that since the reasons for reopening of assessment did not spell out what information or fact was not disclosed by the assessee and there was no new specific material on record, the reassessment proceedings were bad in law. Accordingly, it quashed the notice issued under Section 148 as well as the consequent proceedings.

SABH INFRASTRUCTURE LTD v ASSTT. COMMISSIONER OF INCOME TAX - W.P.(C) 1357/2016 dated 25.09.2017

384. The Court held that if the AO does not follow the law laid down in GKN Driveshafts 259 ITR 19, the reopening proceedings have to be quashed. There is no reason to restore the issue to the AO to pass a further/fresh order because it would give a licence to the AO to pass orders on reopening notice, without jurisdiction (without compliance of the law in accordance with the procedure), yet the only consequence, would be that in appeal, it would be restored to the AO for fresh adjudication after following the due procedure. This would lead to unnecessary harassment of the assessee by reviving stale/ old matters. Accordingly, it allowed assessee's appeal.

KSS Petron Private Ltd vs ACIT-ITA No. 224 of 2014 dated 03.08.2017

Revision

385. The Petitioner had paid tax on interest from FDs and had claimed refund in its return of income. The refund was received on 25th April, 2014. Subsequently, the AO observed that the assessee's assets and liabilities (including FD) was taken over by a company and therefore, he held that interest on FD was to be included in income of company since after take over of the assets the FD belonged to the company. Thereafter, the assessee requested Department for intimation u/s 143(1) and filed application to CIT u/s 264 for revising his intimation on the ground that the same interest could not be taxed twice in the hands of the assessee as well as the company. The CIT observed that the assessee was granted refund and accordingly was aware that his return was processed. Therefore, he held that the revision application was made after 1 year from the date on which refund was granted to the assessee and accordingly, the application was time barred. The Court observed that as per section 264(3), an application could be made within 1 year from the date on which the order was communicated to the assessee or the date on which he comes to know about intimation (whichever is

earlier). It held that till the time Petitioner had copy of intimation u/s 143(1), it could not have been said that the Petitioner had knowledge that his return was processed even though refund was granted to him. Accordingly, it restored the Petitioner's revision application to file of PCIT.

HARGOVIND PANDEY vs. PCIT (2017) 99 CCH 0136 DelHC W.P.(C) 4705/2017 dated 27/07/2017

386. The Petitioner pursuant to assessment order passed filed an application before CIT u/s 264 for revision of the order, claiming deduction of provision for wage arrears which was rejected by the CIT on the ground that the Petitioner had not claimed the deduction in respect of provision for wage arrears by revising the return and therefore, the issue did not arise from the assessment order. The Court relied on Gujarat High Court's decisions in the case of C. Parikh & Co. v. CIT (1980) 122 ITR 610 (Guj) and Jammu and Kashmir High Court's decision in the case of Smt. Sneh Lata Jain v. CIT (2004) 192 CTR 50 wherein it was held that u/s 264, the Commissioner was empowered to call for the record of any proceeding or pass such order thereon and held that the mere fact the Petitioner did not make any claim in the original return and also in its revised return before the passing of the assessment order by the AO would not stand in the way of the CIT exercising revisionary jurisdiction to grant relief. It further held that the Apex Court's decision in Goetze India Limited v. Commissioner of Income Tax (2006) 284 ITR 323 would also not restrict the scope of the revisionary jurisdiction of the CIT. Accordingly, it held that the CIT erred in rejecting the application of the Petitioner on the ground of maintainability.

RITES LIMITED vs. CIT (2017) 99 CCH 0074 DelHC W.P.(C) 5331/2014 dated 03/07/2017

387. The Tribunal held that where during the assessment proceedings the AO had examined details of rents received by the Assessee alongwith the agreement with the tenants and, thereafter, treated the same as income from HP, CIT was incorrect in assuming jurisdiction u/s 263 and directing the AO to make fresh enquiry as to whether the said rental income could be treated as income from business merely on the ground that the AO had not made any elaborate discussion in that regard in the order. The Tribunal observed that the CIT ought to have given findings as to how the order was prejudicial and erroneous to the interest of the revenue and without the same CIT could no assume jurisdiction u/s 263.

Basudev Kumar Sanghai vs. CIT (2017) 50 CCH 0255 Mum. Trib. (ITA No. 5300/Mum/2014 dated August 21, 2017)

388. Where the AO had allowed the Petitioner's claim of interest paid u/s 24(b) on Optionally Fully Convertible Debentures which was utilized for repayment of loan borrowed for the construction of building and the CIT issued notice u/s 263 proposing to revise the original assessment order contending that the interest paid on debentures was not be allowable since the debentures were not directly utilised for the purpose of construction, the Court relying on the CBDT Circular dated 20.08.1969 (which provides that interest paid on the second borrowing used merely to repay the original loan obtained for construction of property was allowable u/s 24 if it was proved to the satisfaction of the Income-tax officer), observed that the AO had examined this aspect at the time of original assessment proceedings and had accordingly, allowed the claim. Therefore, it set aside the notice issued u/s 263.

Aryan Arcade Ltd. vs. CIT (2017) Special Civil Application NO. 2914 of 2016 99 CCH 0176 GujHC Aug 10, 2017

389. Where the assessee acquired assets on its own account as well as under a build operate and transfer scheme (for 30 years) and claimed depreciation @ 50% on such assets as they were used for less than 180 days which was allowed by AO after making proper inquiries, the Court held that the Pr.CIT was not justified in initiating proceedings u/s 263 and **by merely relying upon CBDT Circular No. 9 of 2014** contenting that the depreciation wa excessive and erroneously allowed as under the BOT scheme, the assessee was only entitled to amortization of assets merely relying on CBDT circular no 9 of 2014. The Court held if the Pr.CIT was of the view that the AO did not undertake any inquiry, it was incumbent for him to conduct inquiry to conclude that the AO order was erroneous and prejudicial to the interest of the Revenue which was not done in the instant case. Accordingly, order u/s 263 was quashed.

PCIT vs Delhi Metro Express Pvt Ltd (2017) 100 CCH 0012 Delhi HC ITA No. 705/ 2017 dated 05.09.2017

390. Noting that during the original assessment proceedings, the assessee withheld his actual source of investment in immovable property and the AO summarily accepted assessee's claim that the source of such investment was loan raised from his mother by merely placing on record documents produced without any verification on deliberation on them, the Tribunal upheld the revision of the assessment order u/s 263, considering that the CIT, on perusal of records, had gathered that the loan from the assessee's mother was utilised for payment to another entity and not to the seller of property, who was already paid in earlier year. However, vis a vis CIT's invocation of revisionary power on the ground that stamp duty of the property was more than the declared value, it held that provisions of sec 50C would not be attracted in the hands of the assessee being the buyer of property and therefore assessee's case could not be revised for the purpose of verifying tax liability of the seller i.e, third party.

Parth Ajit Pawar [TS-419-ITAT-2017(MUM) I.T.A. No. 3835/Mum/2017 dated 14.09.2017

391. The Court held that the initiation of revision proceedings on the ground that the AO did not conduct a detailed inquiry on account of paucity of time was unfair on the assessee and therefore invalid. It held that the Pr CIT must be satisfied that the order of the AO was erroneous with respect to the material made available to him and noted that the assessee had furnished all the details available with him along with an explanation to the queries raised by the AO. Accordingly, it held that the Pr CIT was incorrect in invoking Section 263.

Pr CIT v Mera Baba Reality Associates Pvt Ltd - ITA No. 637/2017 dated 21.08.2017

Search / Seizure

392. Pursuant to search carried on by the Railway Police one of the assessee's employee was found in possession of cash of Rs 30 lacs, which was requisitioned and seized u/s 132A, consequent to which search proceedings were initiated in the case of the assessee treating the seized cash as the assessee's concealed income. The Apex court, dismissing the assessee's appeal rejected the assessee's contention that proceedings initiated u/s 132 were invalid as it could not be based on a search conducted on a train by police authorities. It held that since such plea was not raised before any lower authorities and that in any case the retrospective amendment to section 132A (vide Finance Act 2017) provided that the income tax authorities were not required to disclose the reason to suspect/believe as recorded u/s 132, the contention of the assessee was invalid and was not to be considered.

N.K Jewellers vs CIT-TS-426-SC-2017-civil appeal no. 5216 / 2008 dated 13.09.2017

393. The Apex Court admitted Revenue's SLP against High Court order quashing assessment made by AO/TPO u/s 153A pursuant to search and seizure operations as no new incriminating material was found during the search and seizure operations which took place after completion of scrutiny assessment u/s 143(3). Observing that the scrutiny assessment concluded was based upon queries and assessee had disclosed all material which came to be reviewed subsequently under section 153A proceedings, the High Court quashed the assessment order.

Pr.CIT vs Baba Global Ltd-TS-691-SC-2017-TP-ITA no. 938/2016 dated 28.08.2017

394. Pursuant to search proceedings conducted in the BM Gupta group, the Assessing Officer initiated search proceedings in the case of the assessee on the basis of certain documents found at the premises of BM Gupta which allegedly pertained to the assessee. The Court rejected the contention of the Revenue that even prior to the amendment u/s 153 (1st June 2015), it was sufficient that the seized **documents** pertained to the assessee and it is not **necessary to show** that the material belonged to the assessee. It held that prior to the amendment it was sine qua non for the material to 'belong' to the assessee.

CIT & Ors vs Renu Construction Constructions Pvt. Ltd & Ors (2017) 100 CCH 0021 Delhi HC ITA no. 499/2011. 32/2012, 35/2012, 41/2017, 125/2017 dated 06.09.2017

395. The Court held that merely visiting the premises on the pretext of concluding the search but not actually finding anything new for being seized cannot give rise to a second panchnama so as to extend the limitation period for passing the section 153A assessment order. In such event, there would be no occasion to draw up a panchnama at all. The visit and the panchnama drawn up on the date cannot lead to postponement of the period for completion of assessment with reference to section 153B(2)(a) of the Act.

Pr. CIT vs PPC Business and Product Pvt Ltd - ITA 290/2016, ITA 605/2016, ITA 606/2016 ITA 607/2016 dated 17.07.2017

396. The Apex Court dismissed the appeal filed by the Revenue by holding that the High Court was correct in upholding the finding of the Tribunal that as per sec 153C the incriminating material seized during the course of search must pertain to the relevant AYs whereas the documents which were seized did not establish any co-relation, document-wise with the AYs under consideration. It also noted that the satisfaction note recorded by the AO was analysed by the Tribunal and after due consideration the Tribunal reached a conclusion that the documents belonged to a different AY.

CIT vs. Sinhgad Technical Education Society TS-358-SC-2017 (Civil Appeal No. 110080/2017 dated August 29, 2017)

397. The Court dismissed the appeal of the Revenue and held that no notice u/s 153C could be issued to the Assessee for AY 2006-07 as notice u/s 153C to the Assessee was issued on 04/01/2013 and, therefore, the six-year period prior to AY 2013-14 would be AY 2007-08 to AY 2012-13. The Court held that in the case of a person other than the searched person, only subsequent to the notices issued under Sec 153A to the searched person the AO could issue notice. Therefore, the starting point for computation of the block period of six years would be the date on which notice was issued to the 'other person' under Sec 153C and not the date on which the search was conducted as contended by the Revenue.

Pr. CIT vs. Sarwar Agency Pvt. Ltd. (2017) 99 CCH 0191 Del HC (ITA No. 422/2017 dated August 17, 2017)

398. Where based upon the statements made by the director's of the assessee-company in the course of search u/s 132, the AO made additions u/s 68 on the allegation that the assessee had received bogus share-application money, the Court upheld the order of the Tribunal and deleted the additions made by the AO observing that the statements recorded u/s 132 did not by themselves constitute incriminating material for making additions and therefore, the assumption of jurisdiction by the AO u/s 153A was invalid.

PCIT vs. Best Infrastructure (India) Pvt. Ltd. & ORS. (2017) 99 CCH 0163 Del HC ITA No. 13/2017, 11/2017, 12/2017, 20/2017, 14/2017, 15/2017, 16/2017, 17/2017, 18/2017, 19/2017, 21/2017, 22/2017

399. The Court dismissed the appeal of the Revenue and held that where the document seized during the course of search conducted in FY 10-11 did not contribute incriminating material for that year, it could not be the basis of inferring that a certain modus operandi existed for the other assessment years covered under search and therefore held that the addition made during the course of proceedings u/s 153A r.w.s. 143(3) for AY 05-06 to AY 07-08 was not warranted. Accordingly, the additions were deleted.

Pr. CIT vs. Dharampal Premchand Ltd. (2017) 99 CCH 0202 Del HC (ITA No. 512-514/2016 dated August 21, 2017)

400. Where in a search and seizure operation conducted by the investigation wing of Income Tax department, no incriminating documents and material belonging to the assessee and relating to the subject AY was found, the Tribunal confirmed CIT(A)'s order which held that no proceeding u/s 153C

could be initiated against the assessee as the jurisdictional requirement (i.e. the incriminating material should be relating to the assessee and of the subject AY) was not met in assessee's case. Accordingly, the Tribunal dismissed Revenue's appeal against CIT(A)'s order.

PCIT vs Index Securities Private Limited & Ors (2017) 100 CCH 0004 delhi HC -ITA no. 566/2017, 567/2017, 568/2017, 569/2017, 570/2017, 571/2017

401. The Court dismissed Revenue's appeal against Tribunal's order **wherein** the additions **made u/s 68 and 14A pursuant to proceedings u/s 153A/153C were deleted** on the ground that no incriminating material in support of additions was brought on record by the Revenue. The Court held that in light of the finding in the Tribunal's order, no substantial question of law arose in the appeal filed by the Department.

CIT & Ors vs Deepak Kumar Agarwal & Ors (2017) 100 CCH 0011 MumHC ITA no. 1709 of 2014 dated 11.09.2017

402. A search took place in the premises of the assessee pursuant to which a handwritten document was seized containing details of house construction expenses of Rs. 49 Lakh. The explanation offered by the Assessee was that the said paper was not related to him but to the company where he was director. Since the said document was seized from the residence of assessee, the AO drew a presumption u/s 292C that it belonged to him and held that Rs. 49 Lakh constituted the unexplained income of the assessee since the assessee had not submitted any evidence like a confirmation letter or any other document to show that expenditure related to any project of its company. The Tribunal observed that the document did not indicate that it pertained to the assessee nor was the address and location of the property mentioned therein nor such property was located by the AO during the assessment proceedings. Further, it noted that the AO had also not brought on record any forensic evidence to prove the handwriting of the loose paper was of the assessee and no corroborative material was brought on record to substantiate the addition. It further observed that no attempt was made by the AO to find out that the construction expenses of any project of the company of which the assessee was a director. Accordingly, it deleted the addition. The Court upheld the view of the Tribunal and held that the addition of Rs. 49 lakhs was based on surmises and conjectures and that too on the basis of a single document without making any further enquiry.

CIT vs. SHRI PRAVEEN JUNEJA (2017) 99 CCH 0115 DelHC ITA 57/2017 dated 14/07/2017

403. Where an application for issue of shares and confirmation thereon issued by the assessee was found pursuant to search proceedings carried out in the premises of the Dalmia Group of companies and the AO of the Dalmia group recorded a satisfaction that the aforesaid documents belonged to the assessee and handed them over to the AO of the assessee to initiate proceedings against the assessee under Section 153C, the Court held that once the application and confirmation were submitted by the assessee to the Dalmia group it could not be said to belong to the assessee. Accordingly, it quashed the satisfaction note issued by the AO of the Dalmia Group and the consequent proceedings initiated in the case of the assessee.

CANYON FINANCIAL SERVICES LTD. & ORS. vs. ITO & ORS (2017) 99 CCH 0089 DelHC W.P.(C) 3241/2015, W.P.(C) 3242/2015, W.P.(C) 3243/2015, W.P.(C) 3245/2015, W.P.(C) 3246/2015, W.P.(C) 3248/2015 dated 10/07/2017

404. The Court quashed assessment passed u/s. 153A in the assessee's case as no assessment was 'pending' as on the date of initiation of search for relevant AY and no incriminating material was found during the course of search. The Court accepted assessee's reliance on P&H HC ruling in Vipin Khanna (255 ITR 2201) and CBDT Circular 549/1989 which provided that when there was failure to issue notice u/s. 143(2) on assessee within prescribed time, the return would be taken as final and no scrutiny proceedings could be initiated thereof. The Court noted that for the relevant AY, no notice u/s. 143(2) or 142(1) was issued to assessee and the period for issuing such notice expired on September 30, 2009. Accordingly, the assessment order passed u/s 153A was quashed.

Chintels India Ltd. vs. DCIT TS-293-HC-2017 (ITA 581,707 & 731/2016 dated July 19, 2017)

405. The Tribunal held that where the cash seized from assessee-individual's premises during AY 2009-10 pursuant to search and seizure operation u/s. 132 of the Income-tax Act, was deposited in the PD (Personal Deposit) account of the department, it was not available to the assessee as on the valuation date, it could not be considered as assessee's wealth u/s 2(ea)(vi) of the Wealth Tax Act and accordingly not liable for wealth tax.

B. Rajeswar Rao TS-440-ITAT-2017(HYD)-WTA No.80 of 2016 27.09.2017

406. The Tribunal held that the Addl CIT had recorded that he was granting 'mechanical approval' u/s 153D to the draft assessment order for want of time to have meaningful discussion, the assessment order was bad in law and had to be annulled. It further held that the Respondent was entitled to raise an objection under rule 27 even in respect of fresh issues and it was not necessary that the ground should have been decided against the Respondent by the CIT(A).

AAA Paper Marketing Ltd vs ACIT-ITA No. 167 / Lkw / 2016, 168 / lkw / 2016 dated 28.04.2017

407. Where the Assessing Officer had issued a notice u/s 153C and made additions u/s 69C of the Act, based on material seized from the residential premises of a third party (Dilip Dherai) which did not belong to the assessee and a statement made by Dilip Dherai which was later retracted, the Court held that, the Tribunal was correct in concluding that addition could not be sustained in the absence of material which would conclusively show that huge amounts revealed from seized documents were transferred from one side to another. Further, it held that finding by Tribunal that section 153C was not attracted and its invocation was bad in law was correct and no substantial question of law arose. Accordingly, it dismissed Revenue's appeal.

CIT vs Lavanya Land Pvt Ltd-ITA No. 72 of 2014, 114 of 2014 dated 23.06.2017

g. Withholding Tax

408. The Tribunal held that the amounts paid by way of reimbursement of expenses do not constitute income in the hands of the recipient. Consequently, the payer is under no obligation to deduct TDS u/s 194C and no disallowance of the expenditure can be made u/s 40(a)(ia). It further held that CBDT Circular no. 715 dated 08.08.1995 was applicable only where consolidated bills were raised inclusive of contractual payments and re-imburement of actual expenditure but not when separate bills were there for reimbursement of expenditure received.

ACIT vs St. Mary's Rubbers Private Ltd [2017] dated 15.06.2017

409. Where the supplier viz. HCL, under contract awarded by the assessee, supplied the assessee equipment as per the specifications mentioned in the contract and the materials used in supplying such equipment were sourced from other third parties (and not the assessee). The Tribunal held that the assessee was not be liable to deduct tax u/s 194C on payment made to to HCL as it did not constitute 'work' for a contract under the said section.

ITO (OSD) vs Mahanagar Telehone Nigam Ltd [2017] 85 taxmann.com 191 (Delhi Trib.) ITA No. 4715 (delhi) of 2015 dated 01.09.2017

410. The Tribunal held that the payments made by assessee (a nodal agency) to GEPIL an environment infrastructure company entrusted with the job of municipal solid waste management by way of disbursement of grant provided by state government under Jawaharlal Nehru National Urban Renewal Mission (JNNURM) was not liable to TDS as the said payment was not a payment which the assessee was obliged or responsible to make and therefore the primary requirement of section 194C or 194J failed as admittedly the assessee was not the person responsible for payment within the meaning of provisions of chapter XVIIIB of the Act. It noted that the assessee was merely acting as an agent of the state government and thus was only a pass through agency of these funds.

Asansol Durgapur Development Authority vs ITO(TDS)-TS 389 -ITAT-2(KOL) I.T.A Nos. 279 & 280/Kol/2016 dated 08.09.2017

411. The Court, reversing the order of the Tribunal, held that royalty payment made by the assessee to the Airport Authority of India ('AAI') for use of lounge premises, constituted 'rent' under the expanded definition u/s. 194-I. The Court observed that in each case the agreement in question has to be examined to ascertain if the payment is predominantly for the use of space. The Court held that the in the instant case question of being able to operate lounge without the actual use of the space simply did not arise. Since the payment for use of space was inseparable from the payment of royalty for the right to operate the lounge. It held that the payment of the sum by the Assessee to AAI fell within the definition of rent. It also rejected ITAT's conclusion that interest u/s. 201(1A) (for TDS default) could not be charged once the payee had paid the tax and directed the Revenue to compute interest u/s. 201(1A) till the date of payment of taxes by the deductee in terms of SC ruling in Hindustan Coca Cola Beverage (P) Limited (293 ITR 355). However, the Court confirmed ITAT's order on deleting penalty u/s. 271C and opined that the question of whether the payment of royalty for the right to operate the executive lounge was infact 'rent' u/s. 194-I was a debateable issue and, therefore, no penalty could not be levied as it was a debateable issue.

CIT vs. ITC Ltd. TS-274-HC-2017 (ITA No. 73/2005 dated July 4, 2017)

412. Where the assessee, an advertising agent, deducted tax @ 2 percent under Section 194C on payments made to Star India but had made an inadvertent error / mismatch in the PAN of the deductee while furnishing its TDS returns (vis-à-vis the actual PAN of the deductee), which it was unable to correct on the CPC system as the system only accepted correction of typographical errors upto 2 alpha and 2 numeric fields as opposed to 5 changes proposed to be made by the assessee, the Court held that the AO was unjustified in invoking Section 206AA alleging non-furnishing of PAN, requiring deduction of tax @ 20 percent. Noting that Section 200A makes reference to a statement of TDS or a correction statement, it held that no where did the Act or Rules provide that a correction of PAN was to be restricted to 2 alpha and 2 numeric fields and that the Department was unjustified in suggesting that corrections were to be limited only to the aforesaid fields. Accordingly, it directed the Department to verify whether the PAN sought to be corrected by the assessee belonged to the respective deductee and delete addition made under Section 206AA.

Purnima Advertising Agency (P.) Ltd. vs. DCIT (2017) 83 taxmann.com 205 (Special Civil Application No. 18631/2014 dated July 10, 2017)

413. The Court upheld initiation of proceedings u/s. 201(1)/201(1A) and rejected assessee's stand that the notice initiating the said proceeding was issued after almost 10 years and therefore was barred by limitation. The Court held that where limitation to pass an order was not provided under the statute then the order had to be passed with a reasonable time and not beyond that. The Court remarked that a reasonable period would depend on the facts and circumstances of each case and no straightjacket period could be applied. The Court noting the facts of the case held that the assessee did not deduct TDS u/s. 195 on payment of sale consideration to an NRI relating to sale of land. Further, re-assessment proceedings were initiated against the NRI (deductee), and Revenue first explored possibility of recovering entire tax from the person ultimately liable to pay tax (i.e. NRI). However, the Revenue had failed to do so as the Tribunal decided against the revenue (in the case of the NRI) on reassessment proceedings, but, allowed the Revenue to initiate action against the deductor pursuant to which the Revenue thereafter exercised power u/s. 201(1)/(1A) against the Assessee. The Court further disagreed with the view taken by Delhi HC in NHK Japan Broadcasting Corporation (305 ITR 137) that period of limitation of 4 years, as applicable for making assessment u/s. 147, should be made applicable for exercising power u/s. 201(1)/(1A). Accordingly, it held that the initiation of proceedings u/s 201(1)/(1A) was done within a reasonable time.

M/s Mass Awash Pvt. Ltd. vs. CIT (IT) TS-289-HC-2017 (Misc. Bench No. 1088/2016 dated July10, 2017)

414. The Court upheld the order of the Tribunal and held that merely on basis of complaints filed by few pilots against assessee airlines that assessee had deducted higher TDS amounts from their salaries but paid lesser amount to authorities, liability u/s 201 could not be thrust upon assessee. The Court

held that the Tribunal's reasoning that revenue's findings were essentially based upon conjectures and complaints rather than evidence or material was reasonable and sound. Accordingly, it dismissed the appeal filed by the Revenue.

CIT vs. Modiluft Ltd. (2017) 83 taxmann.com 269 (Delhi) (ITA No. 240/2004 dated July 3, 2017)

415. Where the assessee received payments for testing products received by it from third party suppliers and the AO incorrectly held that the assessee was liable to deduct tax at source on payments made by it (without realising that the assessee was earning income and not making payments), which was correctly reversed by the CIT(A), the Court held that the Tribunal was unjustified in confirming the AOs order which misunderstood the facts of the case and in reversing the order of the CIT(A) without making any findings or even referring to it. Accordingly, it set aside the issue to the file of the Tribunal for fresh hearing.

Thyocare Technologies Ltd v ITO – ITA No 53 of 2016 (Bom) dated 11.09.2017

416. The Petitioner HUF had invested in RBI taxable bonds but had inadvertently furnished the PAN of its Karta and the RBI had accordingly, deducted tax on the PAN of the Karta. However, the Petitioner had offered income from bonds to tax and the Karta had not claimed any TDS credit in his return of income. The AO did not accept the request for TDS credit made by the Petitioner. The CIT rejected the revision application of the Petitioner holding that on account of mismatch of PAN reflected in the TDS certificate and that of the Petitioner, the credit could not be granted. On a writ petition being filed, the Court observed that as per Rule 37BA where whole or part of the income on which tax had been deducted at source is assessable in the hands of a person other than the deductee, credit could be given to such other person provided the deductee files declaration with the deductor in this respect containing the details of person to whom credit should be granted along with the reasons and the deductor issuing the TDS certificate in name of that other person. It observed that the Petitioner had not filed any declaration with RBI. However, the Petitioner HUF had offered the income to tax and the TDS was not claimed by Karta in his return of income. Accordingly, it directed the Department to grant TDS credit to the Petitioner HUF.

NARESH BHAVANI SHAH vs. CIT (2017) 99 CCH 0129 GujHC SPECIAL CIVIL APPLICATION NO. 9352 of 2015 dated 18/07/2017

h. Others

Appeals

417. The Apex Court set-aside the order of the High Court and held that the Court was not justified in allowing appeals filed by Revenue u/s 27A of the Wealth Tax Act without formulating substantial question of law. It observed that section 27A of the Wealth Tax Act and sec 100 of the Code of Civil Procedure, 1908 which are identically worded and are pari materi, provided that existence of substantial question of law is a sine qua non for admitting appeal by High Court. Accordingly, it remanded the matter to the High Court for deciding the appeal afresh on merits after formulating the substantial questions of law.

Maharaja Amarinder Singh vs CIT-TS-375-SC-2017 CIVIL APPEAL No.1349 OF 2007 dated 05.09.2017

418. The Court dismissed the Revenue's notice of motion seeking condonation of delay of 1128 days in challenging order of the Prothonotary and Senior Master which dismissed the appeal as the Revenue failed to cure the defects / office objections in the Appeal within the time limit provided by the Prothonotary. It dismissed the contention of the Revenue that it was not aware of the fact that the appeal was dismissed due to non removal of objections until the subsequent appeals were listed for admission before the High Court. It observed that this was a case of gross negligence and utter callousness on the part of the Revenue/Department and further stated that if the Revenue and it's officials were aware of lodging and filing of an Appeal, then, they must attend the Registry's office alongwith their advocate and take requisite steps. Noting that in the present case, the Revenue was given more than one

opportunity to remove the office objections, the Court held that it could not set aside the orders of the Registry. Accordingly, it dismissed the Notice of Motion.

Pr CIT v Parle Bisleri Ltd - NOTICE OF MOTION (L) NO. 1672 OF 2017 dated 28.09.2017

419. The Court refused to condone delay of 335 days on filing of Revenue's appeal. It held that government departments were under a special obligation to ensure that they performed their duties with diligence and commitment. Condonation of delay was an exception and should not be used as an anticipated benefit for Government departments. The mere fact that the AO was busy in other time-bearing assessments is not an excuse for delay particularly given the fact that section. 260A provided a long time period of 120 days. Every day's delay has to be explained. Accordingly, it dismissed Revenue's appeal.

CIT vs Historic Infracon- ITA 409/2017 dated 19.05.2017

420. The Court held that Where assessee is in appeal in the High Court which is filed under Section 260A of the IT Act, if the date of assessment is prior to March 06, 2003, Section 52A of the 1959 Act shall not apply and the court fee payable shall be the one which was payable on the date of such assessment order. Further, it held that In those cases where the Department files appeal in the High Court under Section 260A of the IT Act, the date on which the appellate authority set aside the judgment of the Assessing Officer would be the relevant date for payment of court fee. If that happens to be before March 06, 2003, then the court fee shall not be payable as per Section 260A of the IT Act on such appeals.

K Raveendranathan Nair vs CIT- dated 10.08.2017s

421. Where the Court dismissed the appeal of the department on account of procedural defects in 2013 & the Department filed a notice of motion to reinstate the appeal after a delay of 1371 days, for which no satisfactory explanation was rendered, the Court dismissed the said notice of motion. Accordingly, the appeal of the Revenue stood dismissed. The Court lashed at the Department by observing that explanation so tendered reflected total negligence and callousness of the Revenue officials.

CIT vs. Reliance Industries Ltd. (2017) 84 taxmann.com 313 (Bom) (ITA (L) No. 1647/2012 dated August 22, 2017)

422. Since the question before the Apex court i.e. quantum of deduction of rent & whether the payment of rent was statutory or contractual was a mixed question of law and fact, the Court noting that the issue was neither decided by any of the authorities below nor by the Tribunal or the High Court remanded the matter to the file of the Tribunal for fresh determination.

CIT vs. Travancore Cochin Udyoga Material (2017) 84 taxmann.com 189 (SC)(Civil Appeal No. 2015/2007 dated August 17, 2017)

423. The Court dismissed the Assesse's second writ petition on the same cause of action by holding that the petitioner had withdrawn the earlier petitions without any liberty to file a fresh petition and by doing the Petitioner had indulged in Bench hunting tactics which was disapproved by the SC in the case Sarguja Transport AIR 1987 SC 88. The Court noted that in the earlier petition the Court was persuaded to go on with the matter despite the objection raised by the Revenue about the residential status of the petitioner. After a preliminary hearing, on finding that it was not possible to get over the objection raised and the allegation of suppression of a material fact, the Petitioner withdrew the writ petition, but without seeking any liberty to file a fresh petition on the same cause of action. The Court held that it would be acting contrary to judicial discipline, if a second writ petition on the same cause of action but with a marginal improvement was entertained. The Court further noted that was not a case where substantial justice demanded that the point of maintainability could be overlooked.

Kamal Galani vs. ACIT & others (2017) 99 CCH 0201 Mum HC (WP No. 1033/2017 dated August 14, 2017)

Rectification

424. The Tribunal held that the period of limitation for filing a rectification application is six months from the end of the month in which the order is passed and not from the date of receipt of order. Even if a

liberal view is taken, it can be considered as the date of uploading of the order on the Tribunal website. Ordinarily anything which is uploaded in the public domain can be accessed by the public at large and even the assessee would have access to the order and such a date always be treated as the services of the order.

Srinivas Sashidhar Chaganty vs ITO – ITA No. 1420/hyd/2015 dated 12.07.2017

425. The Court held that for the purposes of filing a rectification application, the period of limitation of six months commences from the date of receipt of the order sought to be rectified by the assessee and not from the date of passing the order.

Liladhar T Khushlani vs Commissioner of Customs- TAX APPEAL NO. 915 of 2016 dated 25.01.2017

426. The Tribunal held that the amendment by the Finance Act, 2016 w.e.f 01.06.2016 specifying the time limit of 6 months to file a rectification application applies even to applications filed with respect to appeal orders passed prior to the date of the amendment and that it has no power to condone the delay in filing a miscellaneous application.

DCIT vs Hita Land Private Limited- Miscellaneous Application No. 103/Mum/2017 dated 25.04.2017

Deemed Dividend

427. Where the AO had added Rs.75,000 received by the assessee from a company in which it held substantial interest as deemed dividend u/s 2(22)(e) without examining the assessee's contention that Rs. 75,000 received by it was repayment towards Rs. 35 Lakhs given by the assessee to the company, the Tribunal restored the matter to CIT(A) by directing him to readjudicate the issue after by verifying the nature of Rs.35 Lakhs paid by the assessee to the company and thereafter decide the issue in accordance with law.

Nanak Ram Jaisinghani vs. ITO (2017) 50 CCH 0266 DelTrib ITA No. 2059/Del/17

Exempt Income / Charitable Trusts

428. The Tribunal accepted Assessee's claim u/s 10(26B) noting that the Assessee had satisfied the conditions stipulated in the said section viz. it was formed primarily for the development and upliftment of the members of the scheduled tribe community in the Union Territory of Lakshwadeep and was wholly financed by the Government.

Lakshadweep Development Corporation Ltd. vs. ACIT (2017) 84 taxmann.com 238 (Coch. Trib.) (ITA No. 18-19/2017 date August 1, 2017)

429. The Court held that depreciation is neither a loss, expenditure or a trading liability and is therefore, not to be deducted while computing quantum of exempt income from operating warehouse u/s 10(29) (which provides that any income derived from the letting of godowns or warehouses for storage, processing or facilitating the marketing of commodities was exempt) relying on the Apex Court ruling in Nectar Beverages Pvt. Ltd. [TS-110-SC-2009]

Central Warehousing Corporation [TS-327-HC-2017(DEL)] ITA No. 584-589/2017 dated 01/08/2017

430. The Tribunal held that where gross receipts of the society exceeded. One crore and society had not taken prior approval from Ld. CCIT, u/s 10(23C) (vi) of the Income Tax Act, 1961 which was mandatory for claiming exemption, assessee would not be entitled for exemption u/s. 10(23C)(iiiad) of Act.

SATLUJ SHIKSHA SAMITI vs. ASSISTANT COMMISSIONER OF INCOME TAX - (2017) 51 CCH 0136 DelTrib - ITA No. 777/DEL/2016 dated 29.09.2017

431. Where the assessee, a charitable society registered u/s 12A, claiming exemption u/s 10(23C) was not allowed depreciation as application of income by the AO since the cost of asset was already allowed

as application of income in the year of purchase of asset and granting depreciation again would amount to double deduction, the Court relying on the decision of the Co-ordinate Bench in the case of CIT vs. Karnataka Reddy Janasangha (389 ITR 229)(Kar), held that grant of the claim of depreciation as application of income did not amount to double deduction was allowable and that the amended provisions of section 11(6) (which do not allow deduction of depreciation) were prospective in nature [operative effective from 01.04.2015 would not apply to the impugned AY i.e. AY 2006-07 Accordingly, it held that while in the year of acquiring the capital asset, what was allowed as exemption was the income out of which such acquisition of asset was made and when depreciation deduction was being allowed in the subsequent years, it was on account of the losses or expenses representing the wear and tear of such capital asset incurred.

DCIT vs. CBCI Society for Medical Education (2017) 50 CCH 0256 BangTrib ITA No. 892/Bang/2016 dated 04/08/2017

432. The Tribunal reversed the order of the CIT(E) and granted Sec. 12A registration to assessee-society involved in the upliftment of farmers and protection of farmers' interests. The Tribunal rejected the contention of the Revenue that Assessee was not carrying out charitable activities and it was merely conferring benefit to a particular section and not public at large by holding that the section of public to whom benefit was intended to be allowed to were farmers which constitute approx. 60% - 70% of population of the country and the protection of interests of farmers would invariably confer several benefits. It further clarified that at the stage of granting registration u/s 12A, CIT(E) was only required to see the objects of society and was not required to examine the application of income.

Bhartiya Kisan Sangh Sewa Niketan vs. CIT(E) TS-372-ITAT-2017 (ITA No. 6721/Del/2015 dated August 25, 2017)

433. The Court allowed Revenue's appeal and reversed the order of the Tribunal granting the assessee registration from 2000 onwards, noting that when the assessee originally applied u/s 12AA in 2000, the application was rejected and it was only in 2004 where the representation were filed before CIT was the registration granted. It held that the date of filing the original application for registration had no relevance as the said application was rejected, and the subsequent application/representation moved in September, 2004.

CIT vs Gyan Deep Shiksha Bharti-TS-396-HC-2017(ALL)-ITA No. 534 of 2009 dated 19.08.2017

434. The Tribunal following its order in the assessee's own case for the prior AY held that the activities carried out by the assessee viz., holding of periodical meetings/conferences of the members and the medical profession in general, to publish and circulate official journals, conduct educational campaigns in India, encourage medical research etc was covered within the definition of charitable purpose for medical relief contained u/s 2(15) and did not involve any trade, commerce or business and accordingly held that the AO erred in denying the assessee exemption u/s 11(1) on the ground that the assessee was engaged in a commercial activity.

Assistant Commissioner of Income Tax vs. Indian Medical Association [I.T.A. No.6076 (2017) 51 CCH 0016 DelTrib]

435. The Court, reversing the Tribunal order, granted exemption to the assessee u/s 11 for AY 2009-10 and held that the activity of the assessee was not in the nature of trade, commerce or business to trigger rigours for section 2(15) proviso. Referring to the provisions of Gujarat Town Planning Act (under which assessee was constituted), it noted that the assessee was subject to the control of the State Government and the entire amount realized by the assessee either by selling plots or by recovery of some fees/charges was to be utilized only for the purpose of urban development. Accordingly, it rejected Tribunal's view that assessee was involved in profiteering.

Ahmedabad Urban Development Authority vs ACIT-TS-383-HC-2017(GUJ)-ITA No. 425 of 2016 dated 02.05.2017

436. Where the CIT had revoked registration of charitable trust u/s 12AA(3) on the ground that the activity carried on by the assessee was in the nature of trade, commerce or business and the Tribunal reversed the order of CIT cancelling registration on the ground that the CIT had not given any finding

that activity of the trust was not genuine activity or it was not being carried out in accordance with the object of the institution, the Court upheld the order of the Tribunal.

CIT vs. MUMBAI METROPOLITAN REGIONAL IRON AND STEEL MARKET COMMITTEE (2017) 99 CCH 0122 MumHC ITA No. 43 OF 2015 dated 17.07.2017

437. The Court upheld granting of charity registration u/s. 12AA to assessee-institution engaged in training and guiding Government officials/farmers in the field of water and land management for a fee by categorising the assessee as being engaged in 'preservation of environment including water-sheds, forests' which is one of the charitable activities specified u/s. 2(15). The Court noted that the Revenue had denied Sec. 12AA registration by categorizing assessee's activity as that of 'advancement of any other object of general public utility' and invoking the turnover criteria of Rs. 25L as per proviso to Sec. 2(15). It **noted that the** Tribunal had allowed the relief relying on Delhi HC ruling in India Trade Promotion Organisation holding that assessee's dominant purpose was not 'profiteering'. The Court upheld Tribunal's final conclusion, however, opined that both Revenue and Tribunal committed 2 mistakes namely, (a) that of overlooking the 5th activity covered by Sec. 2(15) i.e. 'preservation of environment including water-sheds, forests' and wrongly invoking the proviso by focusing on the 7th activity i.e. 'advancement of any other object of general public utility' and (b) is of looking at gross receipts even before grant of registration.

CIT (E) vs. Water and Land Management Training & Research Institute TS-258-HC-2017 (ITTA No. 56 of 2017 dated March 15, 2017)

438. The Tribunal allowed Revenue's appeal and denied exemption under Section 11 to assessee, an institute formed with an objective to promote Indian Composites Industry through collaboration and exchange of information relating to Fibre Reinforced Plastics or other composites, which was promoted through conferences, publication of journals, books, bulletins, etc.. The Tribunal rejected assessee's stand that its objectives would be covered under 'education' for the purposes of Sec 2(15) since it disseminates useful information and that 'education' cannot be confined to class room teaching i.e. formal school/college education alone. The Tribunal held that the word 'education' may assume different forms, not necessarily confined to class room study, as open universities have come about in recent times, but it had to have elements of scholastic education, discipline, and accreditation, i.e., carried out in an organized manner, which stands recognized in the field of education. The Tribunal observed that assessee did not carry out educational courses, where education was imparted in a systematic and formal manner, duly accredited, The Tribunal further concluded that assessee's objectives fall under the ambit of advancement of general public utility and since its receipts exceeded Rs. 25 lakh threshold no charity exemption was to be granted.

ITO (E) vs. FRP Institute TS-307-ITAT-2017 (ITA No. 1385/Mds/2015 dated March 30, 2017)

439. The Court held that at the time of registration of a charitable institution u/s 12AA, the CIT is not required to look into the activities, where such activities have not been initiated or are in the process of its initiation and registration cannot be refused on the ground that the trust has not yet commenced the charitable or religious activity. It held that the registration stage, only the genuineness of the objects was to be tested and not the activities, unless such activities have commenced.

CIT v Shreedhar Sewa Trust - INCOME TAX APPEAL No. 33 of 2017 – Allahabad High Court dated 07.09.2017

Interest

440. The Court, dismissing the appeal of the Revenue, upon reading of Sec. 221 conjointly with the definition of "tax" as provided u/s 2(43) held that the phraseology "tax in arrears" as envisaged in Sec.221 would not take within its realm the interest component since tax u/s 2(43) was defined as income tax, super tax and/ or FBT, as the case may be and not the interest component. The Court noted that tax, penalty and interest are different concepts under the IT Act. The Court further stated that provisions imposing penalty should be strictly construed and anything which was not clearly included within the scope of the language of the provision had to be treated as excluded. The Court

also made reference to sec. 156 notice of demand which also referred to tax, interest, penalty, fine etc. separately.

CIT vs. M/s Oryx Finance & Investment Pvt. Ltd. TS-260-HC-2017 (ITA No. 1 of 2015 dated June 1, 2017)

441. The Tribunal upheld the CIT(A)'s order and held that the assessee was entitled to interest under Section 244A on the refund of the interest paid by it under Section 234B. It rejected Revenue's contention that Section 244A only provides for interest on refund of tax or penalty and not on interest and relying on the decision of the co-ordinate bench in *Alembic Glass – TS-5752 – ITAT- 2006 (Ahd) – O*, held that the expression 'tax' used in Section 244A(1)(b) would include interest. It further held that the definition of tax in Section 2(43) meaning "income tax" would not be applicable in the context of Section 244A(1) of the Act.

ACIT vs National Dairy Development Board-ITA No. /I.T.A. No.1384/Ahd/2014 dated 21.09.2017

442. Where pursuant to an order of the Apex Court, HSBC (who owed money to the assessee) was directed to pay to the assessee a sum of Rs. 102 crore as a result of which the assessee was liable to tax u/s 115JB, the Court dismissed the assessee's writ against the order of the CCIT denying waiver of interest u/s 234C for non-deduction of advance tax. It rejected the assessee's contention that interest waiver should be granted as the review petition filed by HSBC against the Apex Court order was pending and therefore the assessee could not anticipate its accrued income while paying the advance tax of quarter ending September 15th and held that as per CBDT circular date June 26, 2006 and sec 234C, waiver could only be granted in respect of income which was neither anticipated nor was in the contemplation of the assessee and the advance tax on the remaining income was duly paid by the assessee and since a favourable order was passed by Apex Court on July 15, 2013 pursuant to which HSBC deposited the amount with the registry, the amount became assessable to tax in assessee's hands.

Canbank Financial Services Limited vs CCIT-TS-427-HC-2017(KAR) WP No. 7276/2017 dated 15.09.2017

443. The Court rejected the assessee's contention that Section 234E levying a fee for failure to deliver TDS statements as per the prescribed time limit was unconstitutional prior to the amendment made in Section 200A with effect from June 2015 (providing that while processing TDS statements the AO could make adjustments on account of sum payable under Section 234E) as prior to such date Section 200A did not provide for such adjustment. It held that Section 234E was introduced to ensure TDS compliances were met and was in effect a charging section levying fee for defaults in observing compliances which could not be overridden by Section 200A which was a machinery provision merely providing for the processing of TDS statements. Further, it rejected the contention of the assessee that without a regulatory provision in Section 200A providing for adjustment of fee under Section 234E, no fee under Section 234E could be levied. Additionally, it also dismissed assessee's contention that Rule 31A (prescribing a longer period viz. 15 additional days, for the Government to file TDS statements as compared to others) was discriminatory and unconstitutional and held that Article 14 does not prohibit reasonable classification but only frowns upon class legislation. Considering the complexity, volume and turnover of transactions undertaken by the Government, it held that the extended period was perfectly legitimate.

M/s Rajesh Kourani vs. UOI TS-273-HC-2017 (Special Civil Applicatoin No. 302 of 2014 dated June 20, 2017)

444. The Court held that, if the delay in filing the return is completely attributable to the revenue for non-furnishing of copies of the documents and not giving inspection of the documents seized within a reasonable time after making the demand, the interest has to be waived. Though section 158BFA(1) does not confer the power to waive interest, it has to be read in on equitable construction because the subject cannot be made to pay for the negligence of the Officers of the State.

Mahavir Manakchand Bhansali vs CIT-ITA No. INCOME TAX APPEAL No.42 OF 2007 dated 29.06.2017

Penalty

445. The Court held that no penalty u/s 271AAA can be levied in respect of undisclosed income found during a search u/s 132 if the AO did not put a specific query to the assessee by drawing his attention to section 271AAA and asking him to specify the manner in which the undisclosed income, surrendered during the course of search, had been derived.

Pr.CIT vs Emirates Technologies Pvt Ltd- ITA no. ITA 400/2017 dated 18.07.2017

446. The Court quashed prosecution proceedings u/s 276B initiated against the assessee on account of failure to deposit the tax withheld by it on interest and commission payments within the specified time (i.e. 7th of the month following the month when deduction is made) which occurred due to oversight of its accountant as the assessee had reasonable cause for such delay u/s 278AA. Moreover, it noted that upon the defect being noted, the assessee had deposited the TDS along with interest u/s 201(1A).

Sonali Autos Private Limited [TS-312-HC-2017(PAT)] Criminal Miscellaneous No.16498 of 2014 dated 02/08/2017

447. The Court dismissed the appeal of the Assessee and held that where the claim of the Assessee Trust that publishing of newspapers and periodicals would fall within the definition of general public utility and, therefore, would be charitable in nature was rejected by the department for the last forty years and affirmed by the Tribunal, penalty levied u/s 273(2)(a) for furnishing untrue estimate of advance tax and 140A(3) for non-payment of SA tax based on NIL return so filed was to be upheld. It observed that the length of the period during which the Assessee was denied the benefit of the exemption does not permit to hold that the Assessee had a reasonable belief that its income was exempt from tax and consequently NIL estimate of advance tax was filed and no self-assessment tax was paid based on NIL Return.

Trustee of Saurashtra Trust vs. Director of Income tax (2017) 99 CCH 0164 Mum HC (IT Reference No. 66/2000 dated August 4, 2017)

448. The Tribunal deleted penalty levied by the AO u/s 271(1)(c), absent malafide intent to conceal income or furnish inaccurate particulars. It noted that penalty was levied on account of two additions i) disallowance of 50% depreciation, on car which was forgone by the assessee due to unavailability of documentary evidence to prove purchase was made before September 30th and ii) erroneous debit of loss on sale of assets to P&L instead of reducing the same from WDV. It held that the disallowance of depreciation was a mere deferral of depreciation and that the addition on account of sale of assets was due to an accounting error. Further, observing the huge quantum of income declared and taxes paid by assessee, it held that it was evident that the assessee intended to be tax compliant and therefore there was no malafide intention to conceal an income of Rs. 13.09 lacs (not even 0.4% of returned income).

Harish Narinder Salve vs ACIT-TS-414-ITAT-2017(DEL) I.T.A no. 100/del/2015 dated 21.09.2017

449. Where the assessee showed reasonable cause for failure to comply with the statutory notice issued u/s 143(2)/142(1), the Tribunal deleted penalty imposed under section 271(1)(b) of the Act. Noting that for the preceding two AYs the CIT(A) had deleted the penalty imposed being satisfied with the reasoning of the assessee, the Tribunal, applying the principle of consistency, set aside the order of CIT(A) and cancelled the penalty.

Neeru Gupta vs ACIT (2017) 51 CCH 77 delhi Trib.- ITA No. 6569, 6570 & 6571/Del./2014 dated 01.09.2017

450. The Tribunal, relying on the decision in the case of Reliance Petroproducts Ltd held that where the assessee had not suppressed any facts and its claim u/s 80IB and additional depreciation, though disallowed by the AO had been made on basis of audited accounts and on basis of audit report duly furnished by AO, penalty under section 271(1)(c) on account of concealment of particulars of income could not be levied.

DeputyCIT vs GSC Toughened Glass P ltd (2017) 51 CCH 0023 Delhi Trib. ITA no. 6392 / del / 2013 dated 01.09.2017

451. The Court, dismissing the Revenue's appeal, held that provisions of sec. 271(1)(c) could only be invoked only when the conditions laid down in that section are satisfied i.e. furnishing of inaccurate particulars or concealment of income. The Court observed that assessee had disclosed LTCL of Rs 80 Cr. on purchase and sale of share on which STT was paid in its ROI and that it had also filed a note with the ROI reserving right to carry forward the loss and to set it off against future gains as the assessee had not set off the said LTCL with the LTCG on sale of shares, which were exempt u/s 10(38). The Court stated that assessee under a bonafide belief, through the note, carried forward the losses on sale of shares on which STT had been paid. Thus, HC held that assessee acted in good faith with regards to interpretation of Sec. 10(38) and Tribunal was correct in deleting the penalty.
DIT (IT) -II vs. M/s Nomura India Investment Fund Mother Fund TS-262-HC-2017 (ITA No. 1848 of 2014 dated June 15, 2017)
452. The Court upheld Tribunal's order deleting levy of penalty u/s. 271(1)(c) as the show-cause notice did not specify as to whether the assessee defaulted on account of concealment of particulars of income or furnishing of inaccurate particulars of income.
PCIT vs. Smt. Baisetty Revathi TS-299-HC-2017 (ITTA No. 648/2016 dated July 13, 2017)
453. Where the assessee had not paid the self assessment tax under section 140A, while filing the return of income, but paid tax at the time of filing revised return of income, the Court held that the payment of admitted tax liability at the time of revised filing of return of income u/s 139(5), does not affect the lapse committed at the time of filing the original return of income even though claims made in such original income tax return stand supplanted by the claims made in the revised income tax return. Accordingly, it held that the assessee was liable to pay penalty u/s 221(1) of the Act.
Claris Life Sciences Limited vs DCIT- ITA No.498/Ahd/2011 dated 26.09.2017
454. The Tribunal held that penalty u/s 271(1)(c) could not be levied unless there is evidence beyond doubt that there was concealment of particulars of particulars of income or furnishing inaccurate particulars thereof on the part of the assessee. The fact that the assessee did not voluntarily furnish the return of income, and that the merits were decided against it, does not per se justify the levy of penalty. The bonafides of the explanation of the assessee for not complying with the law have to be seen.
DDIT vs Metapath Software International Ltd-ITA No. 1393 /del/2011 dated 28.04.2017
455. The Court dismissed the Revenue's appeal and confirmed the deletion of penalty levy u/s 271(1)(c) as the basis of penalty on which the penalty was initiated by the AO and the basis on which the quantum was confirmed on merits by Tribunal was different.
Indermal vs CIT-INCOME TAX REFERENCE NO.10 OF 2001 dated 06.07.2017
456. The Tribunal held that where Assessee had duly come out with bonafide explanation to support transactions for sale and purchase of flat which was supported by its books of accounts, bank statements and confirmatory letter, merely because registered agreement for sale and purchase of flats were not entered in name of assessee, it would not sufficient to saddle assessee with liability to pay penalty u/s 271(1)(c).
LATE SH. JHAMU SUGHAND vs.ASSISTANT COMMISSIONER OF INCOME TAX - (2017) 51 CCH 0127 MumTrib - ITA No. 5730/Mum/2013 dated 25.09.2017
457. The Tribunal held that when addition on basis of which penalty u/s 158BFA(2) was imposed, had been restored back to AO for fresh adjudication, penalty imposed u/s 158BFA(2) would not survive.
NIRMAL C. JHURANI & ANR. vs.ASSISTANT COMMISSIONER OF INCOME TAX & ANR. - (2017) 51 CCH 0086 MumTrib - IT(SS)A No. 5/Mum./2011, 50/Mum./2008 dated 19.09.2017
458. The Court reversed the Tribunal's order and held that assessee-firm was liable to penalty under Sec. 271D for contravention of section 269SS as it had accepted deposits, otherwise than by account payee cheque / draft. It held that a plain reading of Sec. 271D establishes that it was a mandatory

provision and since its language is crystal clear, the object or the purpose of the enactment of said provision had no say in the matter. In the absence of 'reasonable cause' proved by assessee u/s. 273B no immunity from penalty was available to the Assessee.

CIT vs. M/s Sunil Sugar Co. TS-353-HC-2017 (ITA No. 652/2012 dated July 27, 2017)

459. Where penalty u/s 271E was levied by the AO and upheld by the Tribunal as the assessee had contravened provisions of section 269SS and 269T of the Act and had failed to substantiate its claim that the value of transaction undertaken by it were less than Rs. 20,000, the Court held that the issue raised before it being factual did not constitute a substantial question of law. Accordingly, it dismissed the assessee's appeal.

Najardhanam Balaji vs. Add. CIT (2017) 99 CCH 0177 ChenHC Tax Case Appeal Nos. 413 and 414 of 2017 and C.M.P.No. 10330 of 2017 dated 02/08/2017

460. The assessee engaged in the business of Draft Discounting had earned commission. The AO held that the assessee had failed to prove that he carried on the business of draft discounting and earned commission and he estimated the income @ 5% of the total deposits in bank. The AO then levied penalty u/s 271(1)(c) for concealment of income. The CIT(A) upheld the order of the AO. The Tribunal upheld the contention of the assessee that he carried on the business of Draft Discounting and earned commission. The Court observed that the Tribunal accepted the assessee's contention and therefore, very basis of the Penalty Proceedings was set aside by the Tribunal. Therefore, it held that penalty u/s 271(1)(c) would not be levied on the assessee.

INDERMAL MANAJI vs. CIT (2017) 99 CCH 0132 MumHC INCOME TAX REFERENCE NO.10 OF 2001 dated 06/07/2017

461. The Court, allowing the writ petition of the Assessee, directed the Pr. CIT to process the declaration filed by the Assessee expeditiously by holding that Pr. CIT was incorrect in rejecting the application made by the Assessee under the Dispute Resolution Scheme, 2016 ("DRS") by concluding that it applied only to penalty linked to the total income finally determined through assessment order and not to penalty u/s 271D, 271E and 272A(2)(C) (penalty for violation of sec 269SS, 269T and 285B) as they are transaction specific and not linked with assessment proceedings. The Court opined that the DRS contemplates the making of a declaration of tax arrears, which is defined as meaning an amount of tax, interest or penalty determined, inter alia, under the Act, and in respect of which an appeal is pending before the appellate authority as on 29.02.2016.

M/s Grihalakshmi Films vs. JCIT & Others TS-251-HC-2017 (WP(C) No. 6417 of 2017 dated May 26, 2017)

462. The Court held that a Chartered Accountant who is accused of offering a bribe to an Income Tax Officer for performing an official act can be tried under section 7 and 13(1)(d) of the Prevention of Corruption Act and Section 120-B of the Indian Penal code and the fact that the CA is not a public servant is irrelevant.

H.Naginchand Kincha vs Superintendent of Police-ITA No.- INCOME TAX APPEAL NO.487 OF 2014 dated 13.09.2017

Minimum Alternate Tax

463. The Court held that clause (i) to the explanation was inserted to supersede HCL comnet (305 ITR 409) and accordingly, a mere provision for bad debts has to be added back for computation of book profit u/s 115JA/JB. However, in terms of Vijaya Bank [323 ITR 155(SC)], if there is a simultaneous reduction from the loans and advances on the asset side of the balance sheet, the provision amounts to a write off of the debt which is not hit by clause (1) of the explanation to section 115JB.

CIT vs Vodafone Essar Gujarat Ltd-ITA No.749 of 2012 dated 04.08.2017

464. The Court dismissed the Revenue's appeal and upheld the order of the Tribunal where it was held that the AO is not entitled to add to the 'book profits' the amounts arising from the sale of land which are directly credited to the Capital Reserve Account in the balance sheet.

Pr.CIT vs Bhagwan Industries Ltd [2017]- INCOME TAX APPEAL NO.436 OF 2015 dated 18.07.2017 Bombay High Court

Refund

465. The Court held that that mere issuance of notice u/s. 143(2) claiming extended period for processing of refund u/s. 143(1) would not be sufficient reason to withhold tax refund claimed by the assessee. Assessee had filed tax returns for both the years AY 2015-16 and 16-17 declaring high amount of tax losses and claimed tax refunds arising on account of TDS and for one of years i.e AY 2015-16 notice u/s Sec 143(2) was issued but the assessment was not complete. Further, the Court stated that it would be 'wholly inequitable' for the AO to merely sit over the petitioner's request for refund citing the availability of time up to the last date of framing the assessment u/s 143(3). Applying the reasonable interpretation of the provisions, it observed that the AO was expected to take up an expeditious disposal of the processing of return u/s 143(1) once the assessee requests for release of the refund and send an intimation to the assessee if he wishes to withhold the refund. For AY 2015-16, the Court directed the AO to complete the process by Oct 31, 2017 and for AY 2016-17, it noted that the time limit for processing return u/s 143(1) was not over.

Corrttech International Pvt. Ltd. vs. DCIT [TS-434-HC-2017(GUJ) SPECIAL CIVIL APPLICATION NO. 13987 of 2017 dated 16.09.2017

Set off of losses

466. The Court, setting aside the order of the Tribunal, remanded the matter back to the AO to decide Assessee's claim of carry forward and set off of losses afresh **even though the ROI was not filed within the time limit prescribed**. The Court held that the Assessee, a PSU, was liable to get its accounts audited by the CAG and without such exercise being carried out it was unable to file its ROI with requisite documents. The Court opined that the embargo in sec. 80 i.e. that ROI had to be filed in accordance to sec 139(3) which inturn provided that ROI was to be filed within time limit prescribed u/s 139(1) could not be treated as a straitjacket one which could be applied without reference to different provisions included in sec. 139 and other sections in the Act which provided for a larger time limit for filing return. The Court allowed the Assessee to take recourse to the powers of the CBDT in obtaining clarifications/ directions /orders which would enable to seek leniency where the returns were not filed in time for bonafide reasons.

M/s. Chhattisgarh State Civil Supplies Corporation vs. CIT TS-261-HC-2017 (Tax Case No. 33 of 2015 dated May 12, 2017)

Settlement Commission

467. The Court allowed assessee's writ and set-aside the order of the Settlement Commission ('SC') which rejected assessee's application on the ground that assessee failed to fulfill conditions u/s 245C(1) (which requires the Applicant to make full and true disclosure of income not disclosed before the AO and the manner in which it was earning). The Court rejected view of the SC that since the amounts which were earlier claimed in the returns filed before the AO as deductions, were now sought to be taxed, there was no fresh issue or income being offered for tax which had not been 'declared before the AO'. The Court held that where an income which was not earlier offered to tax, such as an excessive claim for depreciation, was subsequently withdrawn it would lead to income being offered to tax before the SC and the same would satisfy the requirement of Section 245C (1). Accordingly, it restored the application of the Assessee back to SC.

Unitech Wireless (Tamil Nadu) Pvt. Ltd. vs. Pr. CIT TS-342-HC-2017(WP(C) No. 11256/2016 dated August 11, 2017)

468. The Court dismissed the writ filed by the revenue against the order of the Settlement Commission (SC). The Court held that where the Revenue failed to establish any linkage between material seized during search conducted on the Assessee and Uttar Pradesh Distiller's Association (UPDA), of which Assessee was a member, in respect of alleged clandestine payments made to UPDA which was allegedly used to bribe public officials and politicians, no addition could be made. The Court opined that Revenue was under obligation to establish through materials relatable to the Assessee, what it alleged against the Assessee.
CIT vs. Radico Khaitan Ltd. (2017) 83 taxmann.com 375 (Delhi) (WP(C) No. 7007/2008 dated July 13, 2017)

469. The Court, noting that nothing was brought on record substantiating that Settlement Commission's order was vitiated by fraud or malice or contrary to provisions of law, dismissed Revenue's writ challenging Settlement Commission order which held that non-resident entities were not liable to tax in India with respect to equipment/plants sold to Indian Companies offshore. Rejecting Revenue's contention that since the sale stood concluded in India, sale proceeds were taxable in India, the Court held that the Settlement Commission had after considering the contracts in details and provisions of Sale of Goods Act, passed a detailed order holding that sale took place offshore. Accordingly, the Court declined to interfere with the order.
Income Tax Settlement Commission vs DIT(International Taxation)-TS-395-HC-2017(CAL) W.P. W.P. No. 742 of 2013 dated 12.09.2017

470. The Court upheld the constitutional validity of Sections 245D(2A), 245D(2D) and 245HA which introduced payment of additional tax with interest at the time of filing of Settlement application itself and also provided for two months window to pay the taxes due upto July 31 in respect of old applications pending as on June 1, 2007, failing which the settlement proceedings would abate. The Assessee-individual had filed settlement applications (dated May 27, 2007) for seven years and made tax payments for 5 years but could not make the tax payments for two balance years before July 31 as a result of which the Settlement Commission had abated the application for settlement for all the seven years. The Court noted that even pre-amendment, the assessee always had the liability to pay the tax on additional income disclosed in the application for settlement filed before the Commission however, there was no abatement of proceedings on such failure. Accordingly, noting that the legislative intent behind amended provisions was to bring a degree of seriousness and promptness in pursuing the settlement cases, it held that the statute could not be declared as unconstitutional merely because it is likely to work harshly against some sections of the citizens. However, as the assessee had made payment for five years and payment of additional tax was not made only for two years owing to financial difficulty, it stated that the assessee's application need not be seen as one composite application and held that abatement of settlement application should be confined to those AYs for which assessee was unable to make payment of additional tax with interest
Ashish Prafulbhai Patel vs Income Tax Settlement Commission-TS-401-HC-2017(GUJ)-SPECIAL CIVIL APPLICATION NO. 6379 of 2008 dated 07.09.2017

Stay of demand

471. The Tribunal granted further extension of stay of demand to Vodafone Mobile for a period of 6 months or till appeal disposal, whichever is earlier, beyond the original stay of 365 days as the delay in disposal of appeal was not on account of reasons attributable to the assessee. The Tribunal rejected Revenue's contention that Tribunal did not have the power to extend stay beyond 365 days as it was bound by powers conferred by Sec 254(2A), even if the delay was not attributable to assessee and its reliance on Jurisdictional HC ruling in Ecom Gill Coffee (362 ITR 204). The Tribunal observed that that constitutional validity or the vires of 3rd proviso to Section 254(2A) were not tested in the Jurisdictional High Court decision and further placed reliance on the Delhi HC ruling in Pepsi Foods (376 ITR 87). The Tribunal noted that HC in Pepsi Food case, while affirming Tribunal's power to extend stay beyond 365 days in deserving cases, had observed that 3rd proviso to Sec 254(2A) was violative of Article 14 of the Constitution as it had an element of hostile discrimination against the

assessee to whom the delay is not attributable vis-a-vis assessee who had caused delay in adjudication of appeal. Further, observed that the said decision had had attained finality post Revenue's SLP disposal by SC.

Vodafone Mobile Services Ltd. vs. DCIT TS-286-ITA-2017 (SP 261 – 262/Bang/2016 dated June 28, 2017)

Unexplained income / expenses / investments

472. Pursuant to a survey conducted on a CA engaged in providing accommodation entries, it was found that he had provided accommodation entries to the assessee as well and the assessee had failed to produce any documentary evidence regarding nature and genuineness of transactions or credit worthiness of parties involved. The Tribunal reversed the order of the CIT(A) and held that the mere fact that the share transaction of the assessee were subjected to capital gains tax and were through a/c payee cheque, would not make the entries genuine. Accordingly, it upheld the AO's order adding the impugned transaction as unaccounted income in the hands of the assessee.

Esha Securities Pvt. Ltd vs DCIT-TS-402-ITAT-2017- ITA No. 3357 and 3358/Del/2013 dated 13.09.2017

473. Where pursuant to a search carried out in the premises of the assessee (engaged in manufacturing and selling of polyester films etc) the Department recovered laboratory registers containing date wise samples of materials tested in the laboratory, which, as per the employees reflected every item produced and tested, which did not tally with the excise registers maintained by the assessee, the Court held that the Settlement Commission was justified in confirming an addition under Section 69A on account of unaccounted production. It further noted that the number of employees at the premises were far in excess of the number recorded in the books of the accounts of the assessee and that the registers of the earlier years were destroyed as per the directions of the assessee and therefore held that the Settlement Commission had rightly estimated the addition for earlier years based on the actual data available.

SUMILON INDUSTRIES LTD. vs. INCOME TAX SETTLEMENT COMMISSION (2017) 99 CCH 0112 GujHC SPECIAL CIVIL APPLICATION NO. 13218 of 2013 dated 05/07/2017

474. The Court reversed the order of the Tribunal and restored unexplained credit addition u/s. 68 in respect of loans/advances received from four parties as assessee failed to discharge the 'initial' onus of establishing creditworthiness and genuineness qua the creditors. The Court clarified that merely establishing creditors' identity and routing the transaction through cheque, could not by itself mean that the transactions were genuine. The Court observed that the Tribunal ignored evidence on record and did not even examine the genuineness of the transaction or the financial strength of the creditor as required in law and further held that none of those four individuals had the financial strength to lend such huge sums of money to Assessee. The Court further remarked that the transactions in the present appeal were yet another example of the constant use of the deception of loan entries to bring unaccounted money into banking channels.

Pr. CIT vs. Bikram Singh TS-355-HC-2017 (ITA No. 55/2017 dated August 25, 2017)

475. The Court dismissed Revenue's appeal and upheld Tribunal's order which restricted unexplained expenditure addition u/s. 69C to 5% of amount incurred on purchases. The Court rejected Revenue's stand that in terms of Sec. 69C, where no explanation was provided by assessee, the entire amount was liable to be taxed u/s. 69C. It clarified that use of the word 'may' in Sec. 69C makes the deeming provision discretionary and not mandatory. The Court further observed that as explanation could not be submitted within the time allowed due to the death of the Assessee and the fact that the legal heirs were unable to explain the same as they had no knowledge of their deceased father's (Assessee's) business, there was sufficient good cause for not submitting explanation.

Pr. CIT vs. Late Rama Shankar Yadav TS-351-HC-2017 (ITA No. 195/2016 dated August 18, 2017)

476. The Court dismissed the appeal of the Assessee and confirmed the addition made by the AO u/s 68 on certain sum received by it as the Assessee offered no explanation / unsatisfactory explanation about

the nature and source of the credits in the books of account. The Court rejected the argument of the Assessee that since it was not maintaining BOA, the amounts so received could not be brought to tax and held that when Assessee was doing business, then it was incumbent on him to maintain proper BOA and if the Assessee had not maintained it, then it could not be allowed to take advantage of its own wrong. It held that the burden to explain the source & nature of amount received lay on the Assessee.

Arunkumar J. Muchhala vs. CIT (2017) 99 CCH 0206 Mum HC (ITA No. 363/2015 dated August 24, 2017)

477. The Court reversed the order of the Tribunal and held that the benefit of restricting addition u/s 68 to the extent of peak credit could only be granted to the Assessee who provided clear details of all the facts within its knowledge concerning the credit entries in its accounts with sufficient details of the source of all the deposits as well as the corresponding destination of all payments. Noting that the Assessee was unable to explain the source of all deposits and ultimate destination, it held that the benefit of peak credit could not be granted. Accordingly, it upheld the order of the AO.

CIT vs. D K Garg TS-334-HC-2017 (ITA 115/2015 dated August 4, 2017)

478. The Tribunal allowed Assessee's (engaged in export, import and manufacture of precious stones and jewellery) treatment of excess stock / investment found in search as 'business income' and rejected Revenue's stand that the excess stock surrendered during search was to be treated as undisclosed investment u/s. 69B against which no set off of business loss would be available while computing tax liability u/s 115BBE. The Tribunal noted that the excess stock/investment was part of assessee's business and nothing was brought on record to suggest that it was not a regular item of stock. It held that there was no specific provision which restrict set off of business losses against income brought to tax u/s. 69B and observed that the amendment to Sec. 115BBE denying set-off was introduced by Finance Act, 2016 with effect from April 1, 2017 and hence was not applicable to the subject AY 13-14.

ACIT vs. Sanjay Bairathi Gems Ltd. TS-332-ITAT-2017 (ITA No. 157/JP/2017 dated August 8, 2017)

479. The Tribunal allowed the appeal of the Assessee and held that where the Assessee had submitted complete details before the AO for substantiating that she had sufficient cash in hand generated out of her trading business and the same was only deposited in here bank by furnishing Cash Flow Statement, copies of invoices of purchases in cash alongwith corresponding cash sales as well as confirmations from various parties from whom cash was received no addition could be made by the AO u/s 69A (unexplained money) by merely relying upon AIR statement. The Tribunal noted that the Assessee had explained source of complete cash deposits made during the year and, therefore, no addition could be made on the ground of unexplained cash deposit.

Kanika Rathi vs. ITO (2017) 50 CCH 0258 Del Trib (ITA No. 6628/Del/2013 dated August 22, 2017)

480. Where the Assessee was not able to substantiate the creditworthiness of the four parties from whom it had received share application money and there were discrepancies in the submissions made by the said four parties, the Tribunal held that the AO's addition u/s 68 was to be sustained.

Sumadhura Technologies vs. ACIT (2017) 50 CCH 0247 Hyd Trib (ITA No. 380/Hyd/2014 dated August 11, 2017)

481. Where the assessee failed to prima facie demonstrate that the intrinsic value of shares was at par with the exorbitant premium of Rs. 90 per share received, the Tribunal, in the second round of proceedings, held that share premium received by assessee amounted to an unexplained cash credit and accordingly made an addition u/s 68 of the Act. It held that since the assessee was unable to produce even a single party out of 13 subscribers despite them being based locally, it had not made any effort in discharging its initial onus so as to satisfy the basic conditions of identity, capacity, genuineness and creditworthiness of the parties in question.

Umiya Pipes Pvt. Ltd vs ACIT-TS-393-ITAT-2017(Ahd)-ITA No. 1679/ahd/2014 dated 12.09.2017

482. The Tribunal set aside order of the CIT(A) **deleting addition made by the AO on account of unexplained cash credits u/s 68 and remitted the matter** to the file of AO for fresh consideration **observing that** the assessee failed to give satisfactory explanation about nature and source of amount credited in its bank accounts and **therefore did not** discharge its onus of proving genuineness of transactions and creditworthiness of parties from whom amount had been received.
ITO vs Lokesh Secfin Pvt Ltd (2017) 51 CCH 0005 Delhi Trib. ITA no. 460 / del / 2011 dated 01.09.2017
483. The Tribunal deleted **the addition made by the AO on account of unexplained cash credit vis a vis share application money received by assessee (a private limited company) from one of its shareholder (who was daughter of one of the assessee's directors)**. Rejecting Revenue's stand that the source of funds in the hands of shareholder and creditworthiness was not proved, the Tribunal held that the assessee's had submitted earning statements **and** bank account details of the shareholder and her husband which was prima facie evidence of the **credit worthiness** of the shareholder. Further, **noting that the amounts were received through banking channels**, it held that receipts from shareholder could not be treated as unexplained cash credit.
Namision Powertech Pvt Ltd vs ACIT-TS-432-ITAT-2017(AHD)-ITA No. 218/ahd/2015 dated 21.09.2017
484. The Petitioner had purchased a bungalow for consideration of Rs.60 lakhs and while registering the sale deed paid an additional stamp duty. In the order of assessment u/s 143(3), the AO did not make any addition. However, he made reference to the District Valuation Officer (DVO) u/s 142A for his opinion on the fair market value of the property in question. The DVO estimated the fair market value as on the date of the sale at Rs.1.71 crore. After receipt of the valuer's report, the AO issued the notice u/s 148 for re-opening the assessment with the reason to believe that the assessee had undervalued the property and had made investment in excess of the amount declared. Accordingly, he held that the assessee had unaccounted investment as per the provisions of section 69 of the Act. The Court based on the judgment of Division Bench of the Court (wherein the reference to the DVO was held as invalid) held that the report of the DVO was also invalid. Further, it observed that the same information was available with the AO at the time of original assessment which was noticed by the AO, but which did not prompt him to make any addition except for calling of DVO's report which by itself could not form a ground for reopening of the assessment.
ANAND BANWARILAL ADUKIA vs. DCIT (2017) 99 CCH 0109 GujHC SPECIAL CIVIL APPLICATION NO. 6660 of 2013 dated 04/07/2017b
485. The AO made addition u/s 68 in the hands of the assessee on the ground that the parties to whom the assessee had issued shares did not appear before the AO and the summons could not be served on parties since the addresses were not traceable. The Court observed that the assessee had produced before AO the entire record regarding issuance of share i.e. PAN of all creditors along with their bank statements and books of accounts, share certificates etc.. Accordingly, it held that no addition u/s 68 could be made merely on the ground that the parties to whom the share certificates were issued had not appeared before the AO where the assessee had discharged his onus by submitting adequate evidence to substantiate the genuineness of the transaction.
CIT vs. ORCHID INDUSTRIES PVT. LTD. (2017) 99 CCH 0108 MumHC ITA No. 1433 OF 2014 dated 05/07/2017
486. Where assessee failed to furnish satisfactory explanations towards excess gold found from employees of assessee, the Tribunal held that addition under section 69 justified.
FUSION JEWELS OF SOUTH & ORS. vs. DEPUTY COMMISSIONER OF INCOME TAX & ORS. - (2017) 51 CCH 0097 BangTrib - ITA No. 198/Bang/2015 dated 20.09.2017
487. When assessee had received advances from prospective buyers but he failed to give any names and details, the Tribunal held that amount should be treated as unexplained investment and same should be brought to tax under head "income from other sources".
S. SANYASI NAIDU vs. INCOME TAX OFFICER - (2017) 51 CCH 0063 VishakapatnamTrib - ITA No. 40/Vizag/2015 dated 13.09.2017

488. Where i) the AO had not rejected the books of accounts of the assessee and only doubted the genuineness of the suppliers but not the genuineness of the purchases ii) the payments made by the assessee to the suppliers were through account payee cheques iii) there was no evidence that the suppliers had withdrawn cash immediately after the cheques issued by the assessee were deposited iv) the addition proposed to be made was on the basis of vague statements of alleged hawala dealers where no specific reference to the assessee was established for which no opportunity of cross examination was provided to the assessee, the Tribunal held that the AO was incorrect in making addition on account of bogus purchases under Section 69C of the Act. It held that the pre-condition for applying Section 69C is that the expenditure incurred by the assessee should be outside the books of account and would not apply where all purchase and sales transactions were a part of the regular books of accounts of the assessee.

Fancy Wear v ITO - ITA No.1596/Mum/2016 dated 20.09.2017

489. The Court held that where the source of expenditure incurred by the assessee was the 'on money' received by it, the question of making addition under Section 69C on the said expenditure would not arise as the source of the money was duly explained. It held that only the amount received as 'on money' could be taxed and once it was considered as a revenue receipt, then any expenditure out of such money could not be treated as unexplained expenditure as it would lead to double addition in the hands of the assessee.

CIT v Golani Brothers ITA No 17 of 2015 (Bom) dated 29.08.2017

490. The Tribunal held that where the AO had not disputed the genuineness of sales and the quantitative details and the day to day stock register maintained by the assessee, a trader, he could not make an addition in respect of peak balance of the bogus purchases. It held that at worst he could only make addition on account of the element of profit embedded in the bogus purchases. Considering the facts of the case, it restricted the addition to 2% of the bogus purchase.

ACIT v Steel Line (India) - ITA No.1321/Mum/2016 dated 29/08/2017

491. Where the AO, based on the DRP Directions for AY 09-10 & the tax evasion petition filed by the Assessee's share holder raising issues of tax evasion by NDTV, issued notice u/s 148 contending that Rs. 405.09 Cr. invested by the Assessee in Step Up Coupon Bonds of its UK subsidiary was income that escaped assessment & represented the Assessee's unaccounted money, the Court dismissed the Assessee's contention that the documents pertaining to the impugned investment were submitted during original assessment & held that mere disclosure of a transaction at the time of the original assessment proceedings does not protect the assessee from a re-assessment u/s. 147 if AO has information that indicates that the transaction is sham or bogus. Further, it upheld the provisional attachment of the Assessee's immovable properties, non-current investments and refund of Rs.19.88 crores due to NDTV for AY 2008-09 & held that the AO was justified in exercising its extra ordinary power keeping in mind the estimated position of demands that would likely arise from re-assessment for AY 2008-09 and assessment proceedings for AYs 2010-11 to 2013-14 as well as the declining net worth of NDTV & tax evasion allegedly conducted by NDTV by floating paper companies to raise approximately Rs.1100 crore and later dissolving them.

NDTV vs. DCIT TS-333-HC-2017 (W.P.C 9120 & 11638/2015 dated August 10, 2017)

492. The Court upheld the order of the Tribunal and deleted the AO/CIT(A)'s disallowance of commission paid by the assessee to its agent @ 5% of invoice price noting that the assessee had only received 95% of the invoice price and therefore, could not be taxed for income which it had not received. Accordingly, it dismissed the contention of the Revenue that the existence of the agent was doubtful.

CIT vs. Olam Exports (India) Ltd. (2017) 99 CCH 0170 KerHC ITA.No. 1623 of 2009 dated 03/08/2017

493. The assessee formed a subsidiary company in Netherlands viz. NNBV and subsequently formed another subsidiary viz. NNIH wherein 68.6 percent of its capital was held by NNBV and the balance by another company viz. USBV, which had been acquired at a premium of 642.54 crores. Noting that i) NNIH had paid dividend of Rs.642.54 crores out of its premium account to NNBV and that no

premium was paid to USBV ii) NNHI merged with another subsidiary company of the assessee which in turn merged into NNBV which was ultimately liquidated within 2 /3 years of formation iii) the subsidiary companies did not have any business activity / operations iv) USBV's source of funds was from Bermuda (a questionable jurisdiction) v) the directors of USBV did not object to the fact that it did not receive any dividend vi) there was no justification of the valuation based on which USBV invested in NNHI, the Tribunal upheld the addition made by the AO in the hands of the assessee under Section 69A. It held that the AO had correctly made addition of the amount invested by USBV in the assessee's subsidiary as the same was merely routed to the coffers of the assessee who entered into a series of mergers and liquidation by payment of extra-ordinary dividend.

M/s New Delhi Television Ltd. vs. ACIT TS-283-ITA-2017 (ITA No. 1212 /Del/2014 dated July 14, 2017)

i. Miscellaneous

494. Where the assessee owned ground floor of a house property and purchased the first floor of the said house and claimed exemption for both the ground floor and the first floor under section 5 of the Wealth Tax Act by treating both the floors as one single residential unit, the Tribunal, relying on the decision in the case of Shiv Narain Choudhari vs CWT held that two different floors of one house property owned by assessee had to be regarded as single residential unit and exemption was allowable in respect of the same u/s 5(1)(iv).

ITO vs Nathamuni Krishnaswamy Balaji 85 taxmann.com 201 – W.T Appeal No. 17 of 2017 dated 01.09.2017

495. The Court dismissed Assessee-individual's writ and refused to interfere with the order passed by Tax Recovery officer TRO u/s. 159 (proceedings against the legal representative of the deceased). The Court rejected the contention of the Assessee that although he is the son of the deceased, he could not be considered as legal representative as he had not succeeded to the estate due to severance of relationship with the deceased by holding that the definition of legal representative as provided in Sec. 2(11) of the CPC and Sec. 2(29) of IT Act was an inclusive and wider in scope definition which not only included heirs but also persons who represented the estate of the deceased and the Petitioner was undoubtedly, as a matter of fact, one of the heirs and legal representatives of the deceased.

Arvind Kayan vs. UOI & Ors. TS-373-HC-2017 (WP No. 504/2017 dated August 30, 2017)

496. Pursuant to the order of the Delhi High Court, (ultimately upheld by the Supreme Court), the assessee was liable to pay tax on payments received by it under the Race Promotion Contract for which the Department had attached the assessee's letter of credit u/s 281B. The assessee invoked such letter of letter of credit which had to be honored by the bank. The Apex Court directed the assessee to remit the amount received under the said LC towards the tax liability on consideration received under the Race Promotion Contract.

The Royal Bank of Scotland PLC vs. Axis Bank Ltd. & Ors. TS-376-SC-2017 (Civil Appeal No. 11064-65/2017 dated August 25, 2017)

497. The Court allowed the further writ filed by Revenue and set aside the writ court's order (Single Judge) which had allowed writ of the land purchaser's (Petitioner in the first Writ) and lifted the attachment on immovable property sold to it by the vendor who had defaulted in payment of tax arrears. The Court setting aside the Single Judge Order upheld the action of Revenue of attaching the property and held that no sale deed was registered in favour of land purchaser (Petitioner in the first Writ) on the date of the attachment of property. In the absence of a deed of conveyance, duly stamped and registered, no right, title or interest in an immovable property can be said to be transferred to the Petitioner land purchaser. The Court referred to sec 281 and noted that any assessee, though after completion of any proceedings, but before the service of notice under Rule 2 of the Schedule, creates a charge on, or parts with the possession (by sale, mortgage etc) of any asset in favour of any person, such charge

shall be void as against any claim in respect of any tax. The Court, therefore, held the action of the Revenue was valid in attaching the property. The Court further observed that unless the property was transferred in the name of the land purchaser, it had no locus standi to question the order of attachment by filing the first mentioned Writ as a Petitioner.

TRO vs. M/s Sree Foundation & Others TS-271-HC-2017 (Writ Appeal No. 95 of 2016 & CMP No. 1111 of 2016 dated April 18, 2017)

498. The Court dismissed assessee's writ and upheld recovery proceedings against garnishee- Bank (with which assessee had an account) with respect to non-payment of tax arrears by assessee u/s 226(3)(i). The Court rejected assessee's stand that tax recovery proceedings were illegal as it was incumbent upon the Department to have issued notice u/s. 226(3)(iii) to assessee simultaneously with or prior to the issue of notice to the Bank u/s. 226(3)(i) for attaching assessee's bank account and held that the requirement u/s. 226(3)(iii) was only that a copy of the notice should be 'forwarded to the assessee' and not that a copy should be served on the assessee in advance or simultaneously. Further, it observed that the assessee was fully aware of consequences of failure to pay tax within 30 days of receipt of demand notice u/s 156 and also noted that the assessee had not filed any application for stay of demand till date.

GECAS Services India Pvt. Ltd. vs. ITO & Others TS-290-HC-2017 (WP (C) 3127/2017 dated July 11, 2017)

499. The assessee claimed deduction of interest accrued on NPAs according to the guidelines of National Housing Bank (NHB) as per which the debts or loan in respect of which interest had not been received beyond a period of more than 90 days were classified as NPA. The AO, however, as per Section 43D r.w. rule 6EB (which provides that only if interest in respect of a debt or loan was due for more than six months would a loan be treated as NPA) held that the NPA was to be classified as per Rule 6EB of the Rules and not as per the guidelines of NHB and therefore, deduction was not allowable. The Court held that for the permissibility of deduction for the purposes of computing the taxable income is concerned, it is the Act that applies and the purpose of classification of debts as NPA by the NHB was not applicable. Accordingly, it held that deduction was not allowable to the assessee.

HOUSING AND URBAN DEVELOPMENT CORPORATION LIMITED vs. ACIT (2017) 99 CCH 0073 DelHC ITA Nos.440/2016, 442/2016, 444/2016, 445/2016 & 446/2016 dated 03/07/2017

500. Where the Central Board of Direct Taxes (CBDT) issued a Circular under Section 119 of the Income Tax Act, 1961, which amended the provisions contained in Rule 68B of the IInd Schedule to the Income Tax Act, 1961, the Apex Court upheld the decision of the High Court in quashing the circular as ultra vires and held that the legislative provisions cannot be amended by CBDT in exercise of its power under Section 119 of the Act.

The CIT v SV Gopala – Civil APPEAL NO(S). 4901/2010 dated 13-07-2017

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